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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARIJA ANDESILIC and PASSION LOWE, individually and on behalf of all others similarly situated,

## Plaintiffs,

V.

## NEWELL BRANDS INC.,

## Defendant.

Case No.

## **CLASS ACTION COMPLAINT**

1. VIOLATION OF UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)
  2. VIOLATION OF FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*)
  3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *ET SEQ.*)
  4. BREACH OF WARRANTY
  5. UNJUST ENRICHMENT

## **JURY TRIAL DEMAND**

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## 1 COMPLAINT

2       1. Plaintiffs Passion Lowe and Marija Andesilic (“**Plaintiffs**”), individually  
3 and on behalf of all others similarly situated, as more fully described herein (the  
4 “**Class**” and “**Class Members**”), bring this class action complaint against Defendant  
5 Newell Brands Inc. (“**Defendant**” or “**Newell**”), and allege the following based upon  
6 information and belief, unless otherwise expressly stated as based upon personal  
7 knowledge.

### 8 I. INTRODUCTION

9       2. Defendant labels and markets its Rubbermaid TakeAlongs Food Storage  
10 Containers (the “**Products**”) as “Microwave Safe,” “Microwave Reheatable,” and  
11 “Freezer Safe,” leading reasonable consumers to believe the Products can be safely  
12 used in microwaves and freezers. In truth, they are not “safe” for such purposes.  
13 That’s because Defendant makes the Products out of polypropylene plastic, which  
14 releases harmful microplastics directly into food when microwaved or frozen—  
15 dangerous outcomes that are contrary to the explicit safety claims.

16       3. As a result of Defendant falsely promising safety, while also failing to  
17 disclose the Products release microplastics when exposed to heat or freezing,  
18 consumers are unknowingly ingesting dangerous microplastics, exposing themselves  
19 and their families to significant health risks through the very uses Defendant promises  
20 are safe.

21       4. By promoting the Products as affirmatively safe while concealing these  
22 material risks, Defendant has duped consumers nationwide out of millions of dollars,  
23 placing their health and welfare in jeopardy. Sadly, this also includes millions of  
24 families specifically targeted for purportedly safe on-the-go school and work meals,  
25 and vulnerable children for whom ingesting microplastics is especially dangerous.

26       5. **The “Microwave Safe,” “Microwave Reheatable,” and “Freezer**  
27 **Safe” Claims Lull Consumers into False Sense of Security.** Beyond the reasonable  
28 expectation that food storage products are safe for common kitchen use, consumers

1 are further deceived and misled by Defendant's "Microwave Safe," "Microwave  
2 Reheatable," and "Freezer Safe" claims prominently displayed on the Products' labels  
3 (**"Affirmative Misrepresentations"**).

4       6. The "Microwave Safe" and "Microwave Reheatable" representations  
5 convey to consumers that the Products can be safely heated in a microwave. But these  
6 claims are false. When microwaved, the Products release harmful microplastics  
7 directly into the food contained inside. Research shows that microwave heating  
8 causes the highest microplastic release from plastic food containers made of  
9 polypropylene in daily usage scenarios, releasing as many as 4.22 million  
10 microplastic and 2.11 billion nanoplastic particles from *only one square centimeter*  
11 of plastic area within just three minutes.

12       7. These tiny particles have toxic effects on human health. Studies show they  
13 can alter the composition of gut microbiota, which plays a crucial role in proper  
14 digestion, nutrient absorption, and immune system development. Microplastics also  
15 produce a toxic effect on the digestive track, causing irreversible changes in the  
16 reproductive axis and central nervous system of offspring after prenatal and neonatal  
17 exposure, affect the immune system due to their physiochemical properties, and can  
18 cause chronic pulmonary disease. Studies have even shown that people with carotid  
19 artery plaque in which microplastics were detected had a higher risk of a composite  
20 myocardial infarction, stroke, or death from any cause.

21       8. Against this backdrop, no reasonable consumer would equate "safe," as  
22 Defendant promises, with the direct ingestion of unnecessary toxic materials when  
23 the Products are used as directed.

24       9. Defendant's "Freezer Safe" promise is also dangerously false. Freezing  
25 alters the physical properties of the Products due to their polypropylene composition,  
26 making them brittle and prone to fragmentation. This weakened structure increases  
27 the Product's susceptibility to further degradation, especially when subjected to  
28 reheating as Defendant also irresponsibly directs. Studies demonstrate that even under

1 refrigeration or room temperature—without any external stress like microwaving—  
2 polypropylene containers can release thousands of microplastics and millions of  
3 nanoplastics per square centimeter of surface area. Freezing exacerbates this issue,  
4 and these risks are further amplified when combined with reheating—particularly  
5 microwaving, which has been shown to release the highest levels of microplastics.

6       10. Given that Defendant markets the Products as reusable, as a core product  
7 attribute, it also is foreseeable that containers may undergo multiple freeze-thaw and  
8 reheat cycles. The “Freezer Safe” claim thus falsely conveys that the Products are safe  
9 for such use, even though in truth it results in the direct ingestion of toxic  
10 microplastics. It is likewise foreseeable that consumers will use the same “Freezer  
11 Safe” container to reheat food, especially because the packaging also declares  
12 “Microwave Safe” and “Microwave Reheatable.” By affirmatively marketing the  
13 Products as “safe” for freezer use when they are not—while also failing to disclose  
14 the associated microplastic risks—Defendant misleads consumers into believing the  
15 Products are free from such hazards, thereby putting the health of families nationwide  
16 at risk and causing monetary harm by failing to deliver promised product attributes.

17       11. **Material Danger and Material Omission.** While prominently making  
18 the Affirmative Misrepresentations, Defendant simultaneously withholds critical  
19 information from consumers: when the Products are used as intended—heated in a  
20 microwave or stored in a freezer—they leach harmful microplastics directly into food  
21 contained inside, posing serious health risks, including to the human body’s core  
22 digestive, immune, and reproductive systems (the “**Material Omission**”). This  
23 omission further misleads reasonable consumers to believe the Products are safe to  
24 use as directed, when in truth they are not.

25       12. Despite being aware of these risks, Defendant provides no warning or  
26 disclosure to consumers about the release of toxic microplastics when the Products  
27 are used as advertised. By failing to clearly and conspicuously inform consumers of  
28 the health dangers associated with the Products (the “**Material Danger**”—

1 particularly on the front packaging and labels where it affirmatively promises  
2 “safety,” Defendant has breached its legal duties and misled consumers in violation  
3 of consumer protection and other law.

4 **13. Consumer Expectation of Safe Products in the Marketplace.**  
5 Consumers reasonably expect that products sold in the marketplace are safe for their  
6 intended use especially where, as here, that’s what the label affirmatively promises.  
7 Consumers further rely on manufacturers to provide clear warnings if a product fails  
8 to meet this basic expectation of safety. They expect manufacturers to exercise  
9 diligence in ensuring that their products do not expose consumers to harm or, at a  
10 minimum, to provide clear warnings when products present significant health risks.

11 14. These expectations are heightened when the products are intended for use  
12 in food storage and preparation, practices critical to millions of families nationwide.  
13 Defendant exploits these expectations by affirmatively promising safety while  
14 concealing the Material Danger—that its Rubbermaid food storage containers release  
15 harmful microplastics directly into food when the Products are heated, microwaved,  
16 and frozen.

17 **15. The Products Are Represented as and Reasonably Expected to Be**  
18 **Safe.** By labeling the Products as “safe” for microwave and freezer use, Defendant  
19 misleads consumers into believing they are free of risks associated with food storage  
20 and preparation as directed. Consumers rightfully expect that products designed for  
21 food storage and marketed with the Affirmative Misrepresentations will not leach  
22 harmful substances and chemicals directly into their food when used for the purposes  
23 advertised. This expectation is reasonable, as consumers rely on such products to  
24 safely store and heat the food they and their families consume.

25 16. Ensuring that food storage products do not expose consumers, and their  
26 families, to harm is a top concern when making purchasing decisions, as is mitigating  
27 unnecessary exposure to harmful microplastics. This is especially so in light of  
28 mounting evidence further linking microplastics to serious health risks and, as a

1 result, experts advising consumers to avoid them wherever possible to reduce the risk  
2 of serious harm.

3       17. The Product's Affirmative Misrepresentations of safety, together with  
4 Rubbermaid's widespread recognition as a leading brand, amplifies consumer trust in  
5 the safety of the Products. By leaching harmful microplastics directly into food when  
6 heated and frozen as advertised and intended for ordinary use, the Products fail to  
7 meet consumers' reasonable expectation that they are safe and free from the Material  
8 Danger.

9       18. **The Deception of the Affirmative Misrepresentations in the Unlawful  
10 Advertising and Sale of the Products.** Defendant's deceptive conduct misleads  
11 reasonable consumers, including Plaintiffs, through both the Affirmative  
12 Misrepresentations and Material Omission. Defendant affirmatively promises that the  
13 Products are "Microwave Safe," "Microwave Reheatable," and "Freezer Safe,"  
14 leading consumers to believe they can be safely heated and frozen. At the same time,  
15 Defendant omits material information that the Products release harmful microplastics  
16 directly into food when the Products are heated and frozen as intended and instructed  
17 during ordinary use. Both acts of deception mislead consumers into believing the  
18 Products are safe, as promised, to use as directed and free from such risks. This  
19 deception causes consumers to pay a premium for perceived product quality and  
20 promised safety attributes that Defendant fails to deliver. Defendant's Affirmative  
21 Misrepresentations and Material Omission are therefore both misleading and  
22 unlawful.

23       19. **The Products.** The Products at issue are Rubbermaid TakeAlongs Food  
24 Storage Containers sold to consumers in the United States and the state of California,  
25 that contain the "Microwave Safe" representation, the "Microwave Reheatable"  
26 representation, the "Freezer Safe" representation, and Material Omission on their  
27 labels and/or packaging, in all sizes, variations, packs, sets, and bundles (collectively  
28

1 referred to herein and throughout this complaint as the “**Products**”). The Products  
2 include, but are not necessarily limited to, the following:

- 3       a.     *TakeAlongs® Medium Square Food Storage Containers*
  - 4           (1)    4 Piece - 7C
  - 5           (2)    8 Piece – 2.9C
  - 6           (3)    8 Piece – 5.2C
- 7       b.     *TakeAlongs® Serving Bowl Food Storage Containers, 15.7 Cup, 2*  
8           *Count*
- 9       c.     *TakeAlongs® Large Rectangular Food Storage Containers, 4*  
10          *Piece, 1 Gallon*
- 11      d.     *TakeAlongs® Bowl Food Storage Containers*
  - 12           (1)    6 Piece, 5C
  - 13           (2)    8 Piece, 3.2 C
- 14      e.     *TakeAlongs® Medium Rectangular Food Storage Containers*
  - 15           (1)    4 Piece, 8C
  - 16           (2)    6 Piece, 4C
- 17      f.     *TakeAlongs® Food Storage and Meal Prep Container Set*
  - 18           (1)    Assorted, 60 Piece
  - 19           (2)    Black, 30 Piece
- 20      g.     *TakeAlongs® Food Storage Container Set*
  - 21           (1)    20 Piece
  - 22           (2)    24 Piece
  - 23           (3)    40 Piece
  - 24           (4)    64 Piece
  - 25           (5)    16 Piece
- 26      h.     *TakeAlongs® Food Storage 4.7 Cup Divided Containers, Meal*  
27          *Prep*
  - 28           (1)    Black, 16 Piece, 4.7C

(2) Black, 2 Piece, 4.7C

(3) Black, 8 Piece, 4.7C

(4) Assorted, 16 Piece, 4.7C Divided

i. *TakeAlongs® Twist & Seal, Ruby*

j. *TakeAlongs® Twist & Seal Food Storage Containers*

(1) Teal Splash, 6 Piece, 1.6C

(2) Marine Blue, 4 Piece, 2.1C

(3) Red, 6 Piece, 1.6C

(4) Red, 6 Piece, 2.1C

(5) Red, 4 Piece, 3.5C

## *TakeAlongs® Food Store*

k. TakeAlongs® Food Storage 2.9 Cup Square Containers, Meal Prep

(1) Teal Splash, 8 Piece, 2.9C

1. TakeAlongs® Food Storage 3.7 Cup Divided Containers, Meal Prep

(1) Black, 10 Piece, 3.7C

(2) Black, 20 Piece, 3.7C

(3) Red, 6 Piece, 3.7C

(4) Teal Splash, 6 Piece, 3.7C

m. TakeAlongs® Food Storage 5 Cup Containers, Meal Prep

(1) 16 Piece, 5C

(2) 8 Piece, 5C

n. TakeAlongs® Large Square Food Storage Containers, Set of 2

**o. TakeAlongs® Small Square Food Storage Containers**

20. Below are fair and accurate depictions of the representative samples of the Products' front labels, taken from Defendant's official website, evidencing the Affirmative Misrepresentations together with the Material Omission:

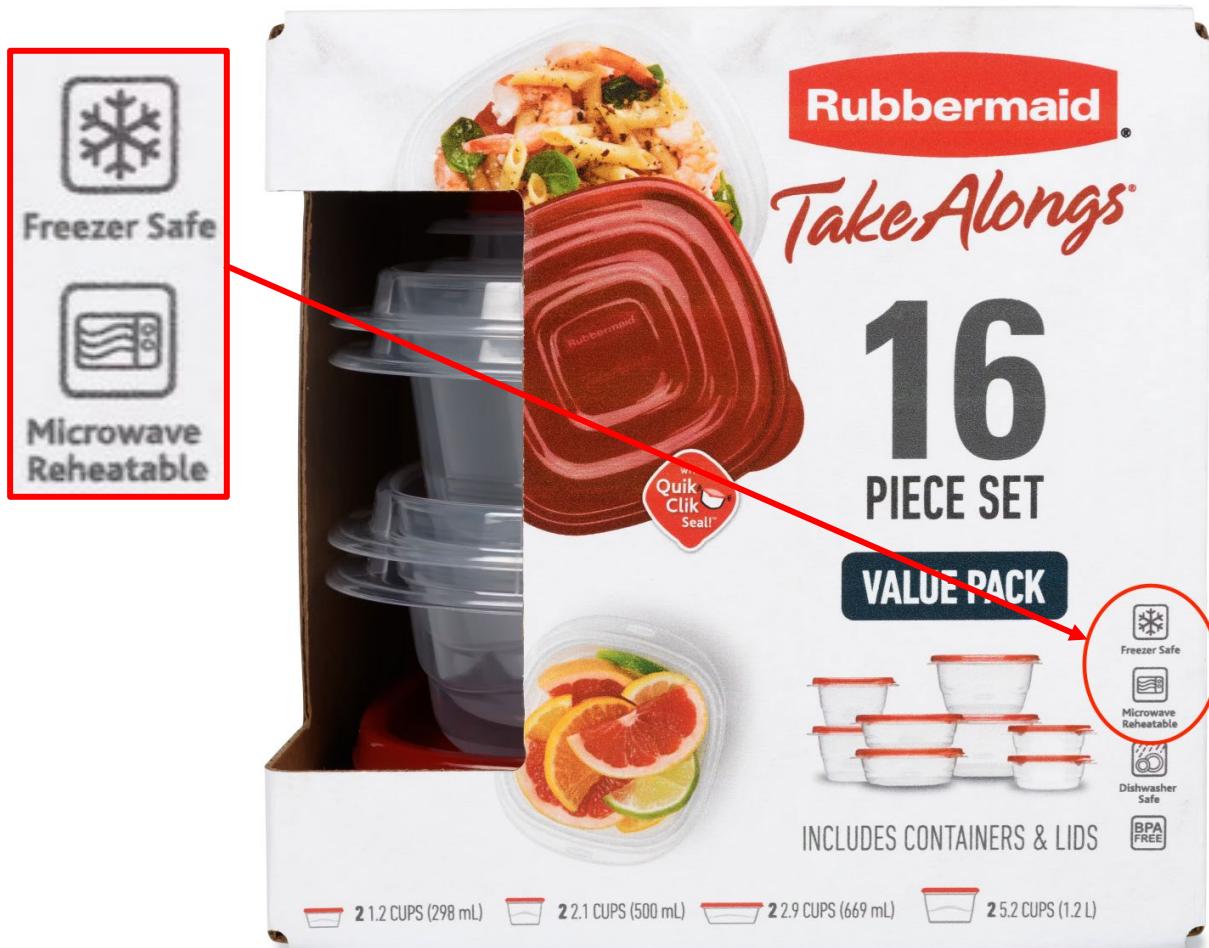
11

1                   **TakeAlongs® Medium Square Food Storage Containers**



**Microwave safe  
Freezer safe  
Recyclable Base**

1 **TakeAlongs® Food Storage Container Set**  
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1 **TakeAlongs® Food Storage 4.7 Cup Divided Containers, Meal Prep**

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16     **21. Primary Dual Objectives.** Plaintiffs bring this action individually and  
 17 on behalf of similarly situated consumers who purchased the Products during the  
 18 relevant Class Period, with two primary objectives. **One**, Plaintiffs seek on Plaintiffs'  
 19 individual behalf, and on behalf of the Class/Subclass, a monetary recovery for the  
 20 price premium they have overpaid for Products as a result of Defendant's Affirmative  
 21 Misrepresentations and Material Omission, as consistent with permissible law  
 22 (including, for example, damages, restitution, disgorgement, and any applicable  
 23 penalties/punitive damages solely as to those causes of action so permitted). **Two**,  
 24 Plaintiffs seek on Plaintiffs' individual behalf, and on behalf of the Class/Subclass,  
 25 injunctive relief to stop Defendant's unlawful manufacture, marketing, and sale of the  
 26 Products with the Affirmative Misrepresentations and the Material Omission to avoid  
 27 or mitigate the risk of deceiving the public into believing that the Products are "safe"  
 28 as promised and do not pose the Material Danger, by requiring Defendant to change

1 its business practices, which may include one or more of the following: removal or  
2 modification to the Affirmative Misrepresentations; disclosure of the Material  
3 Omission on the Products' labels and/or packaging; disclosure of the Material  
4 Omission in the Products' advertising; modification of the Products so that they no  
5 longer pose a risk of the Material Danger; and/or discontinuance of the Products'  
6 manufacture, marketing, and/or sale.

## 7 **II. JURISDICTION**

8 22. This Court has original jurisdiction over the action pursuant to the Class  
9 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class  
10 consists of 100 or more members; the amount in controversy exceeds \$5,000,000,  
11 exclusive of costs and interest; and minimal diversity exists. This Court also has  
12 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

## 13 **III. VENUE**

14 23. Venue is proper in this District under 28 U.S.C. § 1391 because a  
15 substantial part of the events and omissions giving rise to Plaintiffs' claims occurred  
16 in this District. Specifically, Plaintiff Andesilic, as detailed below, purchased the  
17 unlawful Products in this District, and Defendant has marketed, advertised, and sold  
18 the Products within this District.

## 19 **IV. PARTIES**

### 20 **A. Plaintiffs**

21 24. **Plaintiff Marija Andesilic.** The following is alleged based upon Plaintiff  
22 Andesilic's personal knowledge:

23 a. **Residence.** Plaintiff Andesilic is a resident of Los Angeles County, in  
24 the State of California.

25 b. **Purchase Details.** In or around October 2023, Plaintiff Andesilic  
26 purchased Rubbermaid TakeAlongs food containers at a Ralph's store  
27 in the County of Los Angeles for approximately \$20.00 (the  
28 "Andesilic Purchased Products").

- c. **Reliance on Affirmative Misrepresentations and Material Omission.** When making her purchase, Plaintiff Andesilic read and relied upon the Affirmative Misrepresentations and the Material Omission on the Product’s label or packaging. The Affirmative Misrepresentations and the Material Omission led her to believe that the Product was safe and capable of heating food and food storage in a freezer without posing the risk of the Material Danger.
  - d. **No Actual Knowledge of Falsity.** At the time of her purchase, Plaintiff Andesilic was unaware that the Product posed the risk of the Material Danger—i.e., that the Product could leach microplastics when used as is ordinarily expected.
  - e. **No Notice of Contradictions.** Plaintiff Andesilic did not observe any disclaimer, qualifier, or other explanatory statement or information on the Product’s labels or packaging that disclosed or suggested that the Product leaches microplastics when microwaved or frozen as instructed.
  - f. **Causation/Damages.** But for the Affirmative Misrepresentations and the Material Omission—i.e., that the Product carries a substantial risk of releasing microplastics when heated or frozen during ordinary use—Plaintiff Andesilic would not have purchased the Product or would not have paid as much for it.
  - g. **Desire to Repurchase.** Plaintiff Andesilic regularly visits stores where Defendant’s Products are sold, continues to see the Products available for purchase and intends to purchase the Products again in the future if she can be sure that the Products are safe for their central purpose (i.e., if the Products did not pose a risk of the Material Danger). But absent injunctive relief, Plaintiff Andesilic cannot now or in the future rely on the Products’ labels because she cannot know whether they remain deceptive, and she may reasonably, but incorrectly, assume the Products were improved or otherwise changed to be safe and compatible with their central food storage purpose. Plaintiff Andesilic is an average consumer who is not sophisticated in the knowledge of plastic composition or in the manufacturing, composition, and formulation of food storage products, like the Products. An injunction requiring the removal of the Affirmative Misrepresentations and the disclosure of the Material Danger unless the safety risk was eliminated or otherwise prohibiting the use of a materially false and misleading label would enable Plaintiff Andesilic

1 to rely confidently on the labels in making his future purchase  
2 decisions. Absent injunctive relief, Plaintiff Andesilic and other  
3 reasonable consumers would have no way of assessing the safety of  
4 the Products based solely on their packaging, which does not disclose  
that the material releases microplastics upon regular everyday use.

5 **25. Plaintiff Passion Lowe.** The following is alleged based upon Plaintiff  
6 Passion Lowe's personal knowledge:

- 7 a. **Residence.** Plaintiff Lowe is a resident of the County of San Diego, in  
8 the State of California.
- 9 b. **Purchase Details.** In or around late 2022, Plaintiff Lowe purchased  
10 Rubbermaid TakeAlongs Meal Prep food containers from a Walmart  
11 store in the County of San Diego for approximately \$15.00 to \$20.00  
12 (the "**Lowe Purchased Products**").
- 13 c. **Reliance on Affirmative Misrepresentations and Material  
14 Omission.** When making her purchase, Plaintiff Lowe read and relied  
15 upon the Affirmative Misrepresentations and the Material Omission  
16 on the Product's label or packaging. The Affirmative  
17 Misrepresentations and the Material Omission led her to believe that  
the Product was safe and capable of heating food and food storage in  
a freezer without posing the risk of the Material Danger.
- 18 d. **No Actual Knowledge of Falsity.** At the time of her purchase,  
19 Plaintiff Lowe was unaware that the Product posed the risk of the  
20 Material Danger—i.e., that the Product leaches toxic microplastics  
21 directly into food when used for the purposes that Defendant promises  
are "safe."
- 22 e. **No Notice of Contradictions.** Plaintiff Lowe did not observe any  
23 disclaimer, qualifier, or other explanatory statement or information on  
24 the Product's labels or packaging that disclosed or suggested that the  
25 Product leaches toxic microplastics directly into food when  
microwaved or frozen as instructed.
- 26 f. **Causation/Damages.** But for the Affirmative Misrepresentations and  
27 Material Omission—Plaintiff Lowe would not have purchased the  
28 Product or would not have paid as much for it.

g. **Desire to Repurchase.** Plaintiff Lowe regularly visits stores where Defendant’s Products are sold, continues to see the Products available for purchase and intends to purchase the Products again in the future if she can be sure that the Products are “safe” for microwave and freezer use as advertised. But absent injunctive relief, Plaintiff Lowe cannot now or in the future rely on the Products’ labels because she cannot know whether they remain deceptive, and she may reasonably, but incorrectly, assume the Products were improved or otherwise changed to be safe consistent with Defendant’s currently false representations and otherwise compatible with their central purpose of food storage, heating, and freezing. Plaintiff Lowe is an average consumer who is not sophisticated in the knowledge of plastic composition or in the manufacturing, composition, and formulation of food storage products, like the Products. An injunction requiring the removal of the Affirmative Misrepresentations and the disclosure of the Material Danger unless those claims were true or otherwise prohibiting the use of a materially false and misleading label would enable Plaintiff Lowe to rely confidently on the labels in making his future purchase decisions. Absent injunctive relief, Plaintiff Lowe and other reasonable consumers would have no way of assessing the safety of the Products based solely on their packaging, which does not disclose that the material releases toxic microplastics directly into food when used for purposes that Defendant promises are “safe.”

**26. Plaintiffs' Future Harm.** Defendant continues to market and sell the Products with both the Affirmative Misrepresentations and the Material Omission, creating an ongoing harm to consumers. As average consumers without specialized knowledge of plastic composition, including the properties of polypropylene used in the Products, Plaintiffs are particularly vulnerable to this deceptive practice. Despite Plaintiffs' desire to purchase the Products again, there is a substantial risk of future injury due to Plaintiffs' reasonable but incorrect belief that the Products are safe. Given Defendant's continued marketing of the Products as "Microwave Safe," "Microwave Reheatable," and "Freezer Safe" without disclosing the Material Danger, Plaintiffs are likely to believe that the Products have been reformulated to address this safety issue. This mistaken belief, reinforced by Defendant's ongoing misrepresentations and omissions, would lead Plaintiffs to purchase the Products

1 again, exposing them to the same harm they initially experienced. Plaintiffs' lack of  
2 expertise in plastic composition prevents them from independently verifying whether  
3 the Products have been modified to eliminate the risk of microplastic leaching. As a  
4 result, Plaintiffs and other reasonable consumers continue to be deprived of the ability  
5 to make fully informed purchasing decisions regarding the Products despite their  
6 desire to purchase them again. Without injunctive relief, consumers have no way of  
7 assessing the Products' safety based on the packaging. The Products do not clearly  
8 disclose their material composition, and even if they did, consumers would still be  
9 unable to determine whether those materials release harmful microplastics when used  
10 for the purposes that Defendant promises are "safe."

11       **B. Defendant**

12       27. **Defendant Newell Brands Inc.** is a corporation organized under the laws  
13 of Delaware with its principal place of business in Atlanta, Georgia. Defendant was  
14 doing business in the State of California at all relevant times. Directly and through its  
15 agents, Defendant has substantial contacts with and receives substantial benefits and  
16 income from and through the State of California. Defendant is the owner,  
17 manufacturer, and/or distributor of the Products. Defendant and its agents promoted,  
18 marketed, and sold the Products at issue throughout the United States, including the  
19 State of California. The unfair, unlawful, deceptive, and misleading Affirmative  
20 Misrepresentations and Material Omission on the Products were prepared, authorized,  
21 ratified, and/or approved by Defendant and its agents to deceive and mislead  
22 consumers in the State of California into purchasing the Products. Additionally,  
23 Defendant knew of the falsity of the Affirmative Misrepresentations and Material  
24 Omission, but it failed to correct those misrepresentations or disclose the Material  
25 Danger at the time Plaintiffs and all Class Members purchased the Products,  
26 notwithstanding its duty to do so and otherwise comply with consumer protection  
27 laws. Further, Defendant had the right and authority, at all relevant times, to not make  
28 the Affirmative Misrepresentations and/or disclose the Material Omission, including

1 the time leading up to and through the incident giving rise to the claims asserted  
2 (including, Plaintiffs' purchases described above, in addition to all Class Members'  
3 purchases).

## 4 **V. FACTUAL ALLEGATIONS**

### 5 **A. Microplastics Harm Human Health**

6 28. Microplastics are small plastic particles less than 5 millimeters in  
7 diameter that form when solid plastics break down through abrasion, degradation, or  
8 chemical processes such as exposure to heat.<sup>1</sup> These tiny particles can have  
9 significant adverse effects on human health.<sup>2</sup> Studies show that microplastics alter the  
10 composition of gut microbiota, which play a crucial role in digestion, nutrient  
11 absorption, and immune system development.<sup>3</sup> Furthermore, microplastics  
12 “produc[e] a toxic effect on the digestive tract,” that cause irreversible changes in the  
13 reproductive axis and central nervous system of offspring after prenatal and neonatal  
14 exposure, affect the immune system due to their physicochemical properties, and can  
15 cause chronic pulmonary disease.<sup>4</sup>

16 //

17  
18 <sup>1</sup> See Sumon Sarkar et al., *Microplastic Pollution: Chemical Characterization and*  
19 *Impact on Wildlife*, 20(3) INT. J. ENVIRON. RES. PUBLIC HEALTH 1745 (2023).

20 <sup>2</sup> See Raffaele Marfella et al., *Microplastics and Nanoplastics in Atheromas and*  
21 *Cardiovascular Events*, 390 NEW ENGLAND J. MED. 900 (Mar. 6, 2024),  
22 <https://www.nejm.org/doi/full/10.1056/NEJMoa2309822> (concluding that “patients  
23 with carotid artery plaque in which [microplastics and nanoplastics (MNPs)] were  
detected had a higher risk of a composite of myocardial infarction, stroke, or death  
from any cause at 34 months of follow-up than those in whom MNPs were not  
detected”).

24 <sup>3</sup> See Alba Tamargo et al., *PET Microplastics Affect Human Gut Microbiota*  
25 *Communities During Simulated Gastrointestinal Digestion, First Evidence of*  
26 *Plausible Polymer Biodegradation During Human Digestion*, Nature (Jan. 11,  
2022), <https://doi.org/10.1038/s41598-021-04489-w> (“The work presented here  
indicates that microplastics are indeed capable of digestive-level health effects.”).

27 <sup>4</sup> Nur Hanisah Amran et al., *Exposure to Microplastics During Early Developmental*  
28 *Stage: Review of Current Evidence*, MDPI (Oct. 10, 2022), .

1       29. Even in vitro experiments using human cells and in vivo studies  
 2 conducted on mice have indicated that microplastics can trigger a range of adverse  
 3 health effects.<sup>5</sup> These include inflammation, oxidative stress resulting from increased  
 4 production of reactive oxygen species, disturbances in lipid metabolism, imbalances  
 5 in the gut microbiota, and neurotoxicity.<sup>6</sup> Furthermore, microplastic exposure in  
 6 laboratory animals has been linked to immunological responses, endocrine disruption,  
 7 and alterations in energy metabolism.<sup>7</sup>

8       30. Microplastics have been found in blood, saliva, liver, kidneys, and even  
 9 the placenta, which highlights their ability to translocate within the body.<sup>8</sup> Notably,  
 10 nanoplastics, the smallest fraction of these pollutants, have been shown to enter cells  
 11 and even penetrate the cell nucleus, which raises concerns about potential intracellular  
 12 damage.<sup>9</sup> Research connects microplastic exposure and serious health issues such as  
 13 cancer, reproductive problems, lung and liver effects, and disruptions in hormone  
 14 metabolism.<sup>10</sup>

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17       <sup>5</sup> Yongjin Lee et al., *In Vitro Experiments With Human Gut Microbiota Reveal*  
 18 *Changes in Bacterial Composition, Gut Microbiota Dysbiosis, and Neurotoxicity*,  
 19 National Library of Medicine (May 3, 2023),  
<https://pmc.ncbi.nlm.nih.gov/articles/PMC10151227/>.

20       <sup>6</sup> *Id.*

21       <sup>7</sup> Junyi Wu et al., *Effects of Endocrine-Disrupting Chemicals on Gut Microbiota*  
 22 *and Their Impact on Gut-Related Diseases*, Frontiers (Aug. 12, 2021),  
<https://www.frontiersin.org/articles/10.3389/fendo.2021.724989/full>.

23       <sup>8</sup> Andrew Thurston, *Microplastics Everywhere*, Harvard Medicine: The Magazine of  
 24 Harvard Medical School, <https://magazine.hms.harvard.edu/articles/microplastics-everywhere> (last visited Apr. 22, 2025).

25       <sup>9</sup> Joe Myers & Madeleine North, *How Microplastics Get into the Food Chain*,  
 26 World Economic Forum (Feb. 19, 2025),  
<https://www.weforum.org/stories/2025/02/how-microplastics-get-into-the-food-chain/>.

27       <sup>10</sup> See Jiaqi Shi et al., *The Impact of Microplastic Exposure on Gastrointestinal*  
 28 *Tract Cancers: A Comprehensive Review*, 16 CANCERS 3703 (2024),  
<https://www.mdpi.com/2072-6694/16/21/3703>.

1       31. Given that the Products are intended and advertised to be used by families  
2 on daily basis, they pose serious safety risks not only to the adult members but also  
3 children. This is especially concerning as scientists studying microplastics have  
4 emphasized microplastics can be especially dangerous to children and that “enacting  
5 solid legislative laws and policies to manage the excessive use of plastic products is  
6 crucial; otherwise, the health of ecosystems and living organisms will inevitably  
7 deteriorate in the coming years. [...] We feel that the government and industries must  
8 exert the most significant effort to protect children from MPs [microplastics]  
9 exposure. These procedures include avoiding plastic contact of children’s meals[.]”<sup>11</sup>  
10 Consumers therefore consider exposure to microplastics to be a key purchase driver  
11 and seek to avoid the harms associated with ingesting unnecessary microplastics  
12 wherever possible.

13      32. Yet another study emphasized the serious consequences of microplastic  
14 ingestion on cardiovascular systems, finding that subjects with “carotid artery plaque  
15 in which microplastics were detected had a higher risk of a composite myocardial  
16 infarction, stroke, or death from any cause.”<sup>12</sup>

17      33. Despite the clear dangers, Defendant not only actively conceals the  
18 known risks associated with microplastic exposure, but affirmatively promises the  
19 Products are “safe” for microwave and freezer use even though such uses result in the  
20 Material Danger. In reality, consumers are unknowingly exposing themselves and  
21 their families to microplastics, which have been linked to “irreversible changes in the  
22 reproductive axis and central nervous system,” among other severe health  
23 consequences.<sup>13</sup> Defendant’s false advertising thus deprives consumers of the ability  
24 to make informed choices about their health and well-being, while also harming them

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27     <sup>11</sup> Amran et al., *supra* note 4.

28     <sup>12</sup> Marfella et al., *supra* note 2.

13 Amran et al., *supra* note 4.

1 monetarily as the Products do not have the “safe” attributes specifically touted by  
2 Defendant.

3 **34. The Products are Intended for Daily and Constant Use.** Amplifying  
4 the Material Danger is the reality that the Products—Rubbermaid “TakeAlongs” food  
5 storage containers—are not occasional-use items but instead marketed to be used  
6 repeatedly. As essential household products, consumers use the Products every day,  
7 often multiple times in a single day, to reheat meals, store leftovers in freezers, or  
8 prepare food for their families, believing these uses are “safe” because that is what  
9 Defendant affirmatively promises. This frequent and repeated use significantly  
10 amplifies the risk posed by the toxic microplastics the Products release directly into  
11 food, over and over again, when used for the purposes Defendant promises are “safe.”

12 **35. Microplastics Bioaccumulate with Each Use.** This repeated exposure is  
13 especially concerning given that, due to their small size, microplastics are known to  
14 bioaccumulate.<sup>14</sup> Bioaccumulation results in compounding negative health effects,  
15 such as growth and reproduction issues, DNA damage due to oxidative stress,  
16 inflammation, physical stress, weakened immunity, histological damage, or even  
17 death.<sup>15</sup> Microplastics transmit into the human body best through digestion or oral  
18 intake.<sup>16</sup> From there, microplastics can leach toxic additives in the acidic environment  
19 of the stomach and cause liver inflammation.<sup>17</sup> For people with inflammatory bowel  
20 disease (IBS), the microplastics accumulation in feces is directly related to disease

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23<sup>14</sup> Yue Li et al., *Microplastics in the Human Body: A Comprehensive Review of*  
24 *Exposure, Distribution, Migration Mechanics, and Toxicity*, Science Direct (June  
22, 2024),

25 <https://www.sciencedirect.com/science/article/abs/pii/S0048969724043638>.

26<sup>15</sup> *Id.*

27<sup>16</sup> *Id.*

28<sup>17</sup> Dunzhu Li et al., *Microplastic Release from the Degradation of Polypropylene*  
29 *Feeding Bottles During Infant Formula Preparation*, 1 NATURE FOOD 746, 746  
(Oct. 19, 2020), <https://doi.org/10.1038/s43016-020-00171-y>.

1 severity.<sup>18</sup> Those suffering from liver damage also show 8-fold increase in plastic  
2 contamination compared to liver samples from healthy individuals.<sup>19</sup> This illustrates  
3 how microplastics are directly tied to bodily harm and how the greater the amount of  
4 microplastics in one's body, the greater the harm. Thus, each instance of exposure to  
5 microplastics compounds the potential for long-term harm. For example, the quantity  
6 of microplastics in brain samples collected in 2024 was about 50% higher than in  
7 brain samples collected in 2016—demonstrating the alarming reality of  
8 bioaccumulation, and another reason why consumers seek to reduce their exposure to  
9 microplastics.<sup>20</sup>

10       36. A September 2024 study found polypropylene microplastics in bone  
11 marrow tested, demonstrating that microplastics like those shed by Defendant's  
12 Products embed themselves deeply into the human body.<sup>21</sup> Another alarming study  
13 also published in September 2024 conclusively demonstrated the presence of  
14 microplastics in the human brain, with the authors cautioning that their “results should  
15 raise concern in the context of increasing prevalence of neurodegenerative  
16 diseases.”<sup>22</sup> Ingestion of microplastics has also been linked to colon cancer, which is

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17       <sup>18</sup> Zehua Yan et al., *Analysis of Microplastics in Human Feces Reveals a*  
18 *Correlation between Fecal Microplastics and Inflammatory Bowel Disease Status*,  
19 56 ENV'T SCI. & TECH. 414, 414 (Dec. 22, 2021),  
20 <https://doi.org/10.1021/acs.est.1c03924>.

21       <sup>19</sup> Thomas Horvatits et al., *Microplastics Detected in Cirrhotic Liver Tissue*, The  
22 Lancet (July 11, 2022), [https://www.thelancet.com/pdfs/journals/ebiom/PIIS2352-3964\(22\)00328-0.pdf](https://www.thelancet.com/pdfs/journals/ebiom/PIIS2352-3964(22)00328-0.pdf).

23       <sup>20</sup> Douglas Main, *Microplastics Are Infiltrating Brain Tissue, Studies Show: There's Nowhere Left Untouched*, The Guardian (Aug. 21, 2024),  
24 <https://www.theguardian.com/environment/article/2024/aug/21/microplastics-brain-pollution-health>.

25       <sup>21</sup> Xiaoli Guo et al., *Discovery and Analysis of Microplastics in Human Bone*  
26 *Marrow*, Science Direct (Sept. 15, 2024),  
27 <https://doi.org/10.1016/j.jhazmat.2024.135266>.

28       <sup>22</sup> Luís Fernando Amato-Lourenço et al., *Microplastics in the Olfactory Bulb of the*  
29 *Human Brain*, JAMA Network (Sep. 16, 2024),  
30 <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2823787>.

1 on the rise in young people, and other cancers related to the gastrointestinal tract.<sup>23</sup> A  
 2 recent study published in Nature Medicine on February 3, 2025 revealed a concerning  
 3 result that brains accumulate *7–30 times greater* than the concentrations seen in livers  
 4 or kidneys, and brain samples from dementia cases exhibited *even greater*  
 5 microplastic presence.<sup>24</sup> What is even more worrying is that liver and brain samples  
 6 from 2024 had significantly higher concentrations of microplastics than 2016  
 7 samples.<sup>25</sup> It is no wonder that consumers now report valuing product labels that  
 8 disclose the risk of microplastics where applicable—and why doctors, specialists, and  
 9 researchers are recommending consumers do what they can to avoid unnecessary  
 10 exposure to microplastics.

11       37. It is also why Defendant's false advertising is so harmful. The Products  
 12 are marketed and intended for regular use, purporting to serve as essential tools for  
 13 heating, freezing, and preparing food and that consumers rely on daily for these  
 14 purposes because Defendant has falsely promised each of these uses is "safe."  
 15 However, with each use as directed, consumers unknowingly ingest unnecessary toxic  
 16 microplastics that accumulate in their bodies over time due to continuous exposure.  
 17 This buildup increases the risk of serious health issues, including problems with  
 18 digestion, immune function, reproductive health, and more.<sup>26</sup> This ongoing risk  
 19 makes Defendant's misconduct even more egregious and underscores the urgent need  
 20 for accountability.

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23       <sup>23</sup> Bridget Balch, *Microplastics Are Inside Us All. What Does That Mean for Our*  
 24 *Health?*, AAMC (June 27, 2024), <https://www.aamc.org/news/microplastics-are-inside-us-all-what-does-mean-our-health>.

25       <sup>24</sup> Alexander J. Nihart et al., *Bioaccumulation of Microplastics in Decedent Human*  
 26 *Brains*, Nature Medicine (Feb. 3, 2025), <https://www.nature.com/articles/s41591-024-03453-1> (emphasis added).

27       <sup>25</sup> *Id.*

28       <sup>26</sup> Li et al., *supra* note 14.

1           **B. The Products Are Made of Polypropylene Plastic and Are Heated**  
 2           **and Frozen Through Ordinary Use**

3           **38. Defendant Intends for Consumers to Heat and Freeze the Products.**

4           Plaintiffs and other reasonable consumers understand that regular, everyday use of  
 5           Rubbermaid TakeAlongs storage containers includes exposing them to both heat and  
 6           freezing temperatures. This expectation is reinforced by Defendant's own branding  
 7           and marketing, which explicitly promote the Products with the Affirmative  
 8           Misrepresentations. Even the name "TakeAlongs" suggests they are meant for on-the-  
 9           go use—such as bringing meals to work, school, or other settings—where reheating  
 10          in a microwave or storing in a freezer is routine and anticipated. In fact, Defendant  
 11          advertises on its own official webpage that "[s]erving size is great for *leftovers* and  
 12          meal prep, plus pantry and craft storage."<sup>27</sup> Consumers reasonably rely on these  
 13          Affirmative Misrepresentations and expect the Products to be safe for their advertised  
 14          and intended uses. Yet, they aren't "safe" for these uses as promised, because  
 15          Defendant makes the Products with polypropylene, a plastic that releases harmful  
 16          microplastics in significant amounts when subjected to heat or freezing.

17          39. Research shows that polypropylene products can release microplastics  
 18          with values as high as 16.2 million particles per liter, and that exposure to high-  
 19          temperatures, such as those encountered during microwaving, significantly increases  
 20          microplastic release.<sup>28</sup> In fact, another study found that microwave heating caused the  
 21          highest release of microplastics and nanoplastics into food compared to other usage  
 22          scenarios, such as refrigeration or room-temperature storage.<sup>29</sup> It was found that some

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 24          <sup>27</sup> *TakeAlongs® Serving Bowl Food Storage Containers, 15.7 Cup, 2 Count*,  
 25          Rubbermaid, [https://www.rubbermaid.com/food-storage/everyday-use-](https://www.rubbermaid.com/food-storage/everyday-use-containers/takealongs/takealongs-serving-bowl-food-storage-containers-15.7-cup-2-count/SAP_2086745.html)  
 26          [containers/takealongs/takealongs-serving-bowl-food-storage-containers-15.7-cup-2-](https://www.rubbermaid.com/food-storage-containers-15.7-cup-2-count/SAP_2086745.html)  
 27          [count/SAP\\_2086745.html](https://www.rubbermaid.com/food-storage-containers-15.7-cup-2-count/SAP_2086745.html) (last visited April. 8, 2025) (emphasis added).

28          <sup>28</sup> Li et al., *supra* note 17.

29          <sup>29</sup> Kazi Albab Hussain et al., *Assessing the Release of Microplastics and Nanoplastics from Plastic Containers and Reusable Food Pouches: Implications for*

1 containers made of polypropylene could release as many as 4.22 million microplastic  
2 and 2.11 billion nanoplastic particles from *only one square centimeter* of plastic area  
3 *within 3 minutes* of microwave heating.<sup>30</sup> By advertising and selling the Products,  
4 falsely, as “Microwave Safe” and “Microwave Reheatable” without also disclosing  
5 the material risks associated with heating them, Defendant jeopardizes the health and  
6 well-being of countless consumers and misleads individuals who trust that these  
7 Products are “safe” to use for these purposes, as Defendant affirmatively represents.

8 40. Studies also indicate that exposure to low temperatures can change the  
9 physical properties of plastics, making them more brittle when frozen.<sup>31</sup> This  
10 increased fragility presents a similar risk of microplastic release as seen with exposure  
11 to heat.<sup>32</sup> Research indicates that, even without external stimulation such as heating,  
12 refrigeration and room-temperature storage for ten days can cause plastic food  
13 containers made of polypropylene to release thousands of microplastics per square  
14 centimeter and millions of nanoplastics *from only square centimeter of plastic area*.<sup>33</sup>  
15 Given that plastic becomes brittle when frozen, it is unsurprising that cycles of cold  
16 storage followed by reheating can significantly increase the release of microplastics  
17 and nanoplastics, as these temperature fluctuations apply additional stress to the  
18 already weakened plastic containers.<sup>34</sup>

19 41. In a 2025 study, food containers made with polypropylene just like the  
20 Products were filled with water and stored at –20 °C and 4 °C for 24 hours to simulate  
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22 *Human Health*, ACS Publications (June 21, 2023),  
23 <https://pubs.acs.org/doi/10.1021/acs.est.3c01942?ref=PDF>.

24 <sup>30</sup> *Id.*

25 <sup>31</sup> Yalin Chen et al., *Plastic Bottles for Chilled Carbonated Beverages as a Source*  
26 *of Microplastics and Nanoplastics*, Science Direct (Aug. 15, 2023),  
27 <https://www.sciencedirect.com/science/article/abs/pii/S0043135423006796?via%3Dihub> (citations omitted).

28 <sup>32</sup> *Id.*

<sup>33</sup> Hussain et al., *supra* note 29.

<sup>34</sup> See Chen, *supra* note 28.

1 the typical freezing and cooling conditions.<sup>35</sup> Following this, the plastic food  
2 containers were microwaved to simulate the heating process, and each food container  
3 released approximately 100,000 to 260,000 plastic particles.<sup>36</sup> The results also  
4 revealed that freezing temperatures (-20 °C) made plastics more brittle and  
5 fragmented, and resulted in a greater quantity of smaller plastic particles.<sup>37</sup> By  
6 labeling Rubbermaid TakeAlongs as “Freezer Safe” without disclosing the material  
7 risks of reheating frozen food in the microwave—despite also marketing them as  
8 “Microwave Safe” and “Microwave Reheatable”—Defendant misled consumers and  
9 disregarded their health, knowing they would reasonably use the Products for the  
10 everyday food storage and reheating purposes that Defendant falsely promised were  
11 “safe.”

12 **42. Consumers Heat and Freeze the Products Through Ordinary Use.**

13 Consumers routinely use Rubbermaid TakeAlongs food storage containers to heat or  
14 reheat meals in the microwave and to store hot or frozen food, trusting that Products  
15 marketed with Affirmative Misrepresentations are genuinely safe for those purposes,  
16 as affirmatively promised. However, scientific research shows that heating  
17 polypropylene containers—just like Defendant’s Products—at elevated temperatures  
18 significantly increases the release of toxic microplastics directly into food. As  
19 discussed above, heating alone can significantly increase the amount of microplastic  
20 released from polypropylene containers than storage at room temperature.<sup>38</sup> At the  
21 same time, consumers also frequently use these containers to store food in the freezer

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23 <sup>35</sup> Yiting Xia et al, *Subcellular Toxicity Assessments of Microplastics Released from*  
24 *Food Containers*, Science Direct (2025),  
25 <https://www.sciencedirect.com/science/article/abs/pii/S0304389425004534>.

26 <sup>36</sup> *Id.*

27 <sup>37</sup> *Id.*

28 <sup>38</sup> Hussain et al., *supra* note 29; Xin Guo et al., *Migration Testing of Microplastics*  
from Selected Water and Food Containers by Raman Microscopy, Science Direct  
(Jan. 15, 2024),  
<https://www.sciencedirect.com/science/article/abs/pii/S0304389423020824>.

1 and later reheat it. Defendant's own advertising encourages this use, promoting the  
2 Products for packing leftovers and freezer storage and promising they are freezer  
3 "safe."<sup>39</sup> Yet freezing polypropylene can exacerbate microplastic release by making  
4 it even more prone to shedding particles when reheated because low temperatures can  
5 alter the physical characteristics of plastics, and plastic becomes fragile when frozen,  
6 presenting a comparable possibility of toxic microplastics being released.<sup>40</sup> Despite  
7 knowing these risks, Defendant promotes its Products with Affirmative  
8 Misrepresentations of safety while providing no warnings that using the Products in  
9 the ways Defendant promises are "safe"—including freezing, heating, or both—leads  
10 to the direct ingestion of toxic microplastics. As a result, consumers remain unaware  
11 of the hidden dangers they face through routine and foreseeable use of the Products.

12       **43. The Products Pose an Unreasonable Safety Hazard.** The Products are  
13 Rubbermaid TakeAlongs storage containers made of polypropylene plastic, which  
14 pose the danger of leaching microplastics when heated and frozen that can cause  
15 serious health risks such as compromising the immune system, damaging the  
16 digestive tract, and increasing the risk of various cancers. This danger is exacerbated  
17 by the Products' intended and foreseeable use, as Defendant markets the Products  
18 with the Affirmative Misrepresentations and instructs consumers to heat food in them  
19 or store leftovers in freezers without any warning about the Material Danger. The  
20 Material Danger is further compounded by the frequent, routine use of these Products  
21 in household settings. Many consumers use Rubbermaid TakeAlongs food containers  
22 daily for storing, reheating, freezing, or preparing food, thus making exposure to  
23 microplastics a recurring and persistent threat. This is particularly concerning given  
24 that microplastics bioaccumulate in the body, meaning that each exposure compounds  
25 the risk of long-term health harm. As a result, the Products pose an unreasonable

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28<sup>39</sup> *Supra* note 27.

<sup>40</sup> Chen et al., *supra* note 31.

1 safety hazard due to their tendency to leach microplastics directly into food under  
2 normal and intended uses that Defendant falsely promises are “safe.”

3       **44. The Material Danger Negates the Products’ Central Function.** The  
4 central function of Defendant’s Rubbermaid TakeAlongs food storage containers is  
5 to provide a safe means for storing, reheating, freezing, and preparing food. However,  
6 the Products are defective in fulfilling this function because they release harmful  
7 microplastics directly into food when used as intended, a defect that directly  
8 compromises the Products’ ability to perform their intended purpose. Consumers  
9 reasonably expect that food storage products marketed with the Affirmative  
10 Misrepresentations can be used safely for heating and freezing food—because that’s  
11 what the Product labels promise. Reasonable consumers would not equate “safe” with  
12 exposure to toxic materials. The safety of the Products is material and central to their  
13 intended use. Consumers do not purchase food storage products expecting them to  
14 expose themselves or their families to health risks such as the Material Danger. By  
15 releasing toxic microplastics directly into food when heated, a use Defendant  
16 promises is “safe,” the Products fail to fulfill their essential function of providing a  
17 safe and reliable method for food storage and preparation. As a result, the Material  
18 Danger renders the Products defective and unsuitable for their intended and advertised  
19 purpose.

20       **C. The Affirmative Misrepresentations and Material Omission Mislead**  
21           **Reasonable Consumers About the Products’ Safety and Conceal the**  
22           **Presence of Harmful Microplastics**

23       45. Consumers reasonably expect that the Products are safe to use as directed,  
24 particularly when they are explicitly marketed with the Affirmative  
25 Misrepresentations. These representations create a clear promise that the Products can  
26 be used safely for heating and freezing. Relying on these affirmative claims,  
27 consumers trust that using the Products to heat and freeze their food will be “safe.” In  
28 truth, however, and as also affirmatively concealed by Defendant, the Products

1 release harmful microplastics directly into food when heated or frozen. The  
2 Affirmative Misrepresentations and Material Omission are thus not only deceptive,  
3 but also dangerous. Consumers routinely microwave and freeze these containers as  
4 part of normal use, because Defendant promises it is “safe” to do so, unknowingly  
5 exposing themselves and their families to health risks from ingesting contaminated  
6 food. By misrepresenting the Products as “safe” for these uses and concealing the  
7 Material Danger, Defendant denies consumers the ability to make informed decisions  
8 about their health, undermines the very trust its marketing is designed to build, and  
9 has duped consumers out of millions of dollars by failing to deliver advertised  
10 benefits.

11 46. Notably, a recent study tested consumers’ willingness to pay for products  
12 that disclosed the risk of microplastic contamination versus those that did not; the  
13 results revealed that consumers place substantial value on product labels that warn  
14 about the potential harm from microplastics.<sup>41</sup> This is consistent with a key purchase  
15 driver for consumers: avoiding unnecessary microplastics in an effort to reduce the  
16 risk of serious harm. It also highlights the materiality of Defendant’s Affirmative  
17 Misrepresentations and Material Omission and the importance of disclosing the risk  
18 of Material Danger rather than falsely promising the Products are safe.<sup>42</sup>

19 47. By affirmatively representing that the Products with the Affirmative  
20 Misrepresentations even though they cannot deliver the promised attributes, while  
21 also failing to disclose the Material Danger, Defendant has misled consumers about  
22 the safety of its Products. This unlawful deception has enabled Defendant to boost its  
23 profits at the expense of consumers’ trust and their health.

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26 <sup>41</sup> László Benegúz Nagy et al., *Nudging Consumers About the Issue of*  
27 *Microplastics: An Experimental Auction Study on Valuation for Sustainable Food*  
28 *Packaging*, Nature (Aug. 16, 2024), <https://www.nature.com/articles/s41598-024-69962-8>.

<sup>42</sup> *Id.*

1           **D. Plaintiffs and Reasonable Consumers Were Misled by the**  
2           **Affirmative Misrepresentations and Material Omission into Buying**  
3           **the Products**

4           **48. Products.** Defendant manufactures, markets, promotes, advertises,  
5 labels, packages, and sells the Products, each of which represents on the front-label  
6 of the Products with the Affirmative Misrepresentations, while also omitting the  
7 Material Danger.

8           **49. The Affirmative Misrepresentations and the Material Omission.** On  
9 the Products' labeling and packaging, Defendant affirmatively represents the  
10 Products with the Affirmative Misrepresentations to reinforce the false promise that  
11 the Products can be heated or frozen without any risk. At the same time, Defendant  
12 omits material information that the Products release dangerous microplastics directly  
13 into food when heated and frozen.

14           **50. Reasonable Consumer's Perception.** Defendant's Affirmative  
15 Misrepresentations, as well as its omission of the Material Danger, all lead reasonable  
16 consumers like Plaintiffs, to believe that the Products are safe to use as intended and  
17 directed. Consumers are led to believe that the Products are a safer choice for food  
18 storage and preparation and that they do not pose the risk of Material Danger.

19           **51. Materiality.** Defendant's Affirmative Misrepresentations, as well as its  
20 failure to disclose the Material Danger, are each separately and collectively highly  
21 material to reasonable consumers, including Plaintiffs, in deciding whether to  
22 purchase the Products. When it comes to food preparation and storage, safety is a  
23 paramount concern for consumers, particularly when products come into direct  
24 contact with the food they and their families consume. By claiming the Products are  
25 safe for microwave and freezer use, Defendant created a false impression that they  
26 pose no risk when used for these purposes. This deception is especially significant  
27 given that heating and freezing the Products—exactly as Defendant instructs and  
28 promises is “safe”—results in the release of harmful microplastics directly into food.

1       52. For many consumers, the safety of household items used in the kitchen is  
2 a decisive factor in purchasing decisions. Defendant's misleading representations,  
3 coupled with its failure to disclose the Material Danger, deprived consumers of  
4 essential information needed to make informed and health-conscious choices. In  
5 doing so, Defendant not only misled consumers but also compromised their ability to  
6 protect themselves and their families from hidden, avoidable harm.

7       53. **Reliance.** The Class, including Plaintiffs, reasonably relied on the  
8 Affirmative Misrepresentations in deciding to purchase the Products.

9       54. **Falsity.** The Affirmative Misrepresentations and Material Omission are  
10 false and deceptive because the Products are not safe but instead leach harmful  
11 microplastics directly into food when used for the purposes Defendant promises are  
12 safe.

13       55. **Consumers Lack Knowledge of Falsity.** When purchasing the Products,  
14 members of the Class, including Plaintiffs, were unaware and had no reason to believe  
15 the Affirmative Misrepresentations and Material Omission were misleading,  
16 deceptive, and unlawful. The Products' labeling and packaging led consumers to  
17 believe that the Products were safe for microwave and freezer use and free from  
18 harm—because that is what the label promises. The Products did not contain any—  
19 much less a clear, unambiguous, and conspicuously displayed statement—informing  
20 reasonable consumers that the Products posed the risk of the Material Danger. Instead,  
21 the Products affirmatively promised safety. As a result, consumers were misled into  
22 believing the Products were safe for microwave and freezer use and free from harm.

23       56. **Defendant's Knowledge.** Defendant knew, or should have known, that  
24 the Affirmative Misrepresentations and Material Omission were misleading,  
25 deceptive, and unlawful at the time Defendant manufactured, marketed, advertised,  
26 labeled, and sold the Products.

27           a. **Knowledge of Reasonable Consumers' Perception.** Defendant  
28 knew or should have known that the Affirmative Misrepresentations

1 and Material Omission would lead reasonable consumers into  
2 believing that the Products would be safe, as promised, for heating and  
3 freezing food rather than expose them or their families to harmful  
4 microplastics. Not only has Defendant utilized a long-standing brand  
5 strategy to promote its Products as safe and reliable for common  
6 household use, but Defendant also has an obligation under Section 5  
7 of the Federal Trade Commission Act, codified at 15 U.S.C. §§ 45, to  
8 evaluate its marketing claims from the perspective of the reasonable  
9 consumer. This statutory obligation required Defendant to consider  
10 whether the Affirmative Misrepresentations and Material Omission,  
11 whether in isolation or in conjunction with its marketing strategy,  
12 would mislead reasonable consumers into believing that the Products  
13 are free from the Material Danger. Thus, Defendant either knew that  
the Affirmative Misrepresentations and the Material Omission were  
misleading before it marketed the Products to the Class, including  
Plaintiffs, or Defendant would have known that the representations  
and omission were deceptive had it complied with its statutory  
obligation to evaluate marketing claims from the reasonable  
consumer's perspective.

- 14 b. **Knowledge of Falsity.** Defendant manufactured and marketed the  
15 Products with the Affirmative Misrepresentations and Material  
16 Omission despite knowing that the Products did not conform to these  
17 representations. Specifically, Defendant advertised, labeled, and  
18 packaged the Products as "Microwave Safe," "Microwave  
Reheatable," and "Freezer Safe," while intentionally failing to inform  
19 consumers that the Products release toxic microplastics directly into  
20 food when heated or frozen. This conduct indicates that Defendant  
21 either knew the Products could not perform as advertised, or would  
22 have known had it fulfilled its statutory duty to evaluate marketing  
23 claims from the reasonable consumer's perspective. Defendant's  
conscious decision to withhold this critical information reflects an  
intentional effort to mislead consumers into believing the Products  
24 were safer than they actually are.
- 25 c. **Exclusive Knowledge.** Defendant is in a superior position to Plaintiffs  
26 and the Class to know about the Products' Material Danger. As the  
manufacturer of the Products, Defendant has exclusive knowledge of  
the dangers associated with microplastic contamination. Defendant's  
control over the manufacturing, design, distribution, and safety testing  
of the Products gives it unique insight into the presence of the Material  
Danger. Rather than disclosing this information, Defendant purposely

1 made the Affirmative Misrepresentations and retained its exclusive  
2 knowledge by failing to inform consumers that the Products are made  
3 from polypropylene and that polypropylene is known to release  
4 microplastics when heated and frozen. Instead, Defendant actively  
5 concealed this risk by prominently labeling the Products with the  
Affirmative Misrepresentations to reinforce the false impression that  
they could be safely heated and frozen without risk.

6 **d. Knowledge of Materiality.** Defendant knew or should have known  
7 that the Affirmative Misrepresentations and Material Omission were  
8 material to consumers. Manufacturers and marketers, like Defendant,  
9 are well aware that product safety is a paramount concern for  
consumers, particularly for products designed to hold or heat food.  
10 Here, the Affirmative Misrepresentations and Material Omission  
11 directly relate to the safety of the Products. Defendant's awareness of  
12 this materiality is evident by its decision to prominently label the  
Products as the "Microwave Safe," "Microwave Reheatable," and  
13 "Freezer Safe," which Defendant knew would signal to consumers that  
the Products were safe for heating and freezing food. Furthermore, it  
14 is common sense that information about the risk of harmful  
15 microplastic contamination would directly influence consumer  
16 purchasing decisions. Defendant knew that disclosing the risk of  
17 microplastic leaching would likely deter consumers from purchasing  
the Products and so it unlawfully elected instead to falsely promise  
safety.

18 **e. Defendant's Continued Deception, Despite Its Knowledge.** As the  
19 manufacturer and marketer of the Products, Defendant had exclusive  
20 control over the Affirmative Misrepresentations and Material  
Omission of the Material Danger on the Products' labels, packaging,  
21 and advertisements. Defendant could have easily disclosed the  
Material Danger or ceased promising the Products were safe for  
heating or freezing food. Despite its knowledge and its awareness that  
22 consumers reasonably rely on these representations and omissions  
when making purchasing decisions, Defendant deliberately chose to  
market the Products with the Affirmative Misrepresentations while  
23 omitting the associated risks. This intentional deception misled  
consumers into purchasing or overpaying for the Products under the  
false belief that they were safe for their intended use. Accordingly,  
24 Defendant knew or should have known, at all relevant times, that its  
conduct would mislead reasonable consumers, including Plaintiffs,  
25 into purchasing the Products based on false and deceptive  
26

1 representations.

2       **57. Duty to Disclose Material Omission.** Defendant had an obligation, at all  
3 relevant times, to disclose the Material Omission—that the Products leach harmful  
4 microplastics directly into food when heated or frozen during ordinary use. This  
5 critical information, which Defendant deliberately withheld from consumers, is not  
6 only material to their purchasing decisions but also poses significant risks to  
7 consumer health and well-being. Defendant knew or should have known that  
8 reasonable consumers would interpret the Affirmative Misrepresentations as meaning  
9 the Products would be just that—“safe” to heat or freeze. The absence of any  
10 disclosure about the Material Danger furthered the affirmative deception. Defendant  
11 was also fully aware that consumers place a high value on product safety, particularly  
12 when it comes to food preparation and storage, and that this perceived safety was a  
13 key factor influencing consumers’ purchasing decisions. By affirmatively promising  
14 safety, while also failing to disclose the Material Danger, Defendant misled  
15 consumers into relying on the Affirmative Misrepresentations and the Material  
16 Omission when deciding to purchase the Products.

17       **58. Detriment.** Plaintiffs and similarly situated consumers would not have  
18 purchased the Products or would not have paid a price premium for them, had they  
19 known that the Affirmative Misrepresentations were false and the Products posed the  
20 Material Danger and, therefore, did not possess the attributes claimed, promised,  
21 warranted, advertised, and/or represented. Defendant’s Affirmative  
22 Misrepresentations and its Material Omission misled reasonable consumers into  
23 believing the Products were safe for heating or freezing food. As a result, reasonable  
24 consumers, including Plaintiffs, purchased the Products to their detriment, paying for  
25 a product that did not deliver promised attributes while also unknowingly exposing  
26 themselves and their families to the Material Danger.

27       //

28       //

1           **E. The Products are Substantially Similar**

2       59. As described herein, Plaintiffs purchased the Purchased Products. The  
3 additional Products identified *supra* (collectively, the “**Unpurchased Products**”) are  
4 substantially similar to the Purchased Product.

- 5           a. **Defendant.** All Products are manufactured, sold, marketed,  
6 advertised, labeled, and packaged by Defendant.
- 7           b. **Brand.** All Products are sold under the same brand name: Rubbermaid  
8 TakeAlongs.
- 9           c. **Marketing Demographics.** All Products are marketed directly to  
10 consumers for personal use.
- 11          d. **Purpose.** All of the Products are Rubbermaid TakeAlongs food  
12 storage containers intended and marketed for routine food-related  
13 uses, including storage, meal preparation, heating, microwaving, and  
14 freezing. Defendant uniformly markets the Products with identical  
15 Affirmative Misrepresentations and Material Omissions, leading  
16 reasonable consumers to believe the Products are safe for these  
17 purposes. However, Defendant fails to disclose a material fact: that  
18 during ordinary and foreseeable use, the Products release harmful  
19 microplastics into food, posing undisclosed risks to consumers.
- 20          e. **Use.** All of the Products are designed, advertised, and expressly  
21 instructed by Defendant to be used for the same purposes: heating  
22 food, microwaving food, and storing food in freezers. Defendant’s  
23 marketing materials and usage instructions actively promote these  
24 uses, encouraging consumers to expose the Products to heat and  
25 freezing conditions through representations such as “great for  
26 leftovers and meal prep, plus pantry and craft storage.” Despite  
27 promoting these foreseeable and intended uses, Defendant fails to  
28 disclose a material risk: that such uses cause the Products to release  
harmful microplastics into food, exposing consumers to undisclosed  
health hazards.
- 29          f. **Affirmative Misrepresentations and Material Omission.** All  
30 Products contain the Affirmative Misrepresentations and Material  
31 Omission on their packaging and labeling, reinforcing the false  
32 impression that they can be safely heated or frozen without risk.

**g. Packaging.** All Products are similarly packaged in a way that emphasizes their suitability for microwave use and/or freezer use, while omitting any warning about the Material Danger.

**h. Key Attributes.** All of Defendant's Rubbermaid TakeAlongs food storage containers are uniformly made of polypropylene, a material known to release significant amounts of microplastics into food when heated or frozen. Defendant consistently encourages consumers to microwave and freeze the Products through uniform advertising, packaging, and instructions, reinforcing the common expectation that all of the Products are safe for such ordinary and foreseeable uses.

- i. **Misleading Effect.** The misleading effect of the Affirmative Misrepresentations and Material Omission is uniform across all Products—consumers overpay for Rubbermaid TakeAlongs storage containers under the mistaken belief that they are safe for heating and freezing food and pose no risk of the Material Danger.

#### **F. No Adequate Remedy at Law**

**60. No Adequate Remedy at Law.** Plaintiffs and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

- a. **Broader Statutes of Limitations.** The statutes of limitation for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitation under the FAL and CLRA. In addition, the statutes of limitation vary for certain states' laws for breach of warranty and unjust enrichment/restitution, between approximately 2 and 6 years. Thus, California Subclass members who purchased the Products more than 3 years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class members who purchased the Products prior to the furthest reach-back under the statute of limitation for breach of warranty, will be barred from recovery if equitable relief were not permitted for restitution/unjust enrichment.

b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes, for example, Defendant's overall unfair marketing scheme to promote and brand the Products

1 with the Affirmative Misrepresentations and Material Omission,  
2 across a multitude of media platforms, including the Products' labels  
3 and packaging, over a long period of time, in order to gain an unfair  
4 advantage over competitor products and to take advantage of  
5 consumers' desire for products that comport with the Affirmative  
6 Representations. The UCL also creates a cause of action for violations  
7 of law (such as statutory or regulatory requirements and court orders  
8 related to similar representations and omissions made on the type of  
9 products at issue). Thus, Plaintiffs and Class members may be entitled  
10 to restitution under the UCL, while not entitled to damages under other  
11 causes of action asserted herein (e.g., the FAL requires actual or  
12 constructive knowledge of the falsity; the CLRA is limited to certain  
13 types of plaintiffs (an individual who seeks or acquires, by purchase  
14 or lease, any goods or services for personal, family, or household  
15 purposes) and other statutorily enumerated conduct). Similarly, unjust  
16 enrichment/restitution is broader than breach of warranty. For  
example, in some states, breach of warranty may require privity of  
contract or pre-lawsuit notice, which are not typically required to  
establish unjust enrichment/restitution. Thus, Plaintiffs and Class  
members may be entitled to recover under unjust enrichment/restitution,  
while not entitled to damages under breach of warranty, because they purchased the products from third-party  
retailers or did not provide adequate notice of a breach prior to the  
commencement of this action.

- 17
- 18 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiffs and members of  
19 the Class because Defendant continues to misrepresent the Products  
20 with the Affirmative Misrepresentations and Material Omission.  
Injunctive relief is necessary to prevent Defendant from continuing to  
21 engage in the unfair, fraudulent, and/or unlawful conduct described  
herein and to prevent future harm—none of which can be achieved  
22 through available legal remedies (such as monetary damages to  
compensate past harm). Further, injunctive relief, in the form of  
affirmative disclosures is necessary to dispel the public misperception  
23 about the Products that has resulted from years of Defendant's unfair,  
fraudulent, and unlawful marketing efforts. Such disclosures would  
24 include, but are not limited to, publicly disseminated statements  
providing accurate information about the Products' true nature; and/or  
requiring prominent qualifications and/or disclaimers on the Products'  
front labels concerning the Products' true nature. An injunction  
25 requiring affirmative disclosures to dispel the public's misperception  
26

1 and prevent the ongoing deception and repeat purchases based  
2 thereon, is also not available through a legal remedy (such as monetary  
3 damages). In addition, Plaintiffs are currently unable to accurately  
4 quantify the damages caused by Defendant's future harm, because  
5 discovery and Plaintiffs investigation have not yet completed,  
6 rendering injunctive relief all the more necessary. For example,  
7 because the Court has not yet certified any class, the following remains  
8 unknown: the scope of the class, the identities of its members, their  
9 respective purchasing practices, prices of past/future Product sales,  
10 and quantities of past/future Product sales.

- 11
- 12 d. **Public Injunction.** Further, because a “public injunction” is available  
13 under the UCL, damages will not adequately “benefit the general  
14 public” in a manner equivalent to an injunction.
- 15 e. **California vs. Nationwide Class Claims.** Violations of the UCL,  
16 FAL, and CLRA are claims asserted on behalf of Plaintiffs and the  
17 California Subclass against Defendant, while breach of warranty and  
18 unjust enrichment/restitution are asserted on behalf of Plaintiffs and  
19 the Nationwide Class. Dismissal of farther-reaching claims, such as  
20 restitution, would bar recovery for non-California members of the  
21 Class. In other words, legal remedies available or adequate under the  
22 California-specific causes of action (such as the UCL, FAL, and  
23 CLRA) have no impact on this Court’s jurisdiction to award equitable  
24 relief under the remaining causes of action asserted on behalf of non-  
25 California putative class members.
- 26 f. **Procedural Posture—Incomplete Discovery & Pre-Certification.**  
27 In addition, discovery—which has not yet been provided and/or  
28 completed—may reveal that the claims providing legal remedies are  
inadequate. At this time, forcing an election of remedies at the initial  
pleadings stage, in the absence of completed discovery regarding class  
certification and merits, is premature and likely to lead to subsequent,  
potentially belated, and hotly contested motions to amend the  
pleadings to add equitable remedies based on a lengthy historical  
recount of discovery and analysis of voluminous exhibits, transcripts,  
discovery responses, document productions, etc., as well as related  
motions to seal confidential information contained therein.

27 //  
28 //

1        **VI. CLASS ACTION ALLEGATIONS**

2        61. **Class Definition.** Plaintiffs bring this action as a class action on behalf of  
3 themselves and all others similarly situated as members of the Class defined as  
4 follows:

5              All residents of the United States who, within the applicable  
6 statute of limitations periods, purchased the Products, containing  
7 the Affirmative Misrepresentations and Material Omission on  
the Products' labels or packaging, for purposes other than resale  
("Nationwide Class"); and

8              All residents of California who, within four years prior to the  
9 filing of this action, purchased the Products, containing the  
Affirmative Misrepresentations and Material Omission on the  
Products' labels or packaging, for purposes other than resale  
("California Subclass").

10             (the "Nationwide Class" and "California Subclass" are collectively referred to as the  
11 "Class").

12        62. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant,  
13 its assigns, successors, and legal representatives; (ii) any entities in which Defendant  
14 has controlling interests; (iii) federal, state, and/or local governments, including, but  
15 not limited to, their departments, agencies, divisions, bureaus, boards, sections,  
16 groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this  
17 matter and person within the third degree of consanguinity to such judicial officer.

18        63. **Reservation of Rights to Amend the Class Definition.** Plaintiffs reserve  
19 the right to amend or otherwise alter the class definitions presented to the Court at the  
20 appropriate time in response to facts learned through discovery, legal arguments  
21 advanced by Defendant, or otherwise.

22        64. **Numerosity.** Members of the Class are so numerous that joinder of all  
23 members is impracticable. Upon information and belief, the Nationwide Class  
24 consists of tens of thousands of purchasers (if not more) dispersed throughout the  
25 United States, and the California Subclass likewise consists of thousands of  
26 purchasers (if not more) dispersed throughout the state of California. Accordingly, it  
27 would be impracticable to join all members of the Class before the Court.  
28

1           **65. Common Questions Predominate.** There are numerous and substantial  
2 questions of law or fact common to all members of the Class that predominate over  
3 any individual issues. Included within the common questions of law or fact are:

- 4           a. Whether Defendant engaged in unlawful, unfair, or deceptive business  
5 practices by advertising and selling the Products;
- 6           b. Whether Defendant's conduct of advertising and selling the Products  
7 as safe food storage containers while labeling them with the  
8 Affirmative Misrepresentations and omitting that they leach  
9 microplastics during ordinary use constitutes an unfair method of  
10 competition, or unfair or deceptive act or practice, in violation of Civil  
11 Code section 1750, *et seq.*;
- 12           c. Whether Defendant used deceptive representations or omission in  
13 connection with the sale of the Products in violation of Civil Code  
14 section 1750, *et seq.*;
- 15           d. Whether Defendant represented that the Products have characteristics  
16 or quantities that they do not have in violation of Civil Code section  
17 1750, *et seq.*;
- 18           e. Whether Defendant advertised the Products with intent not to sell them  
19 as advertised in violation of Civil Code section 1750, *et seq.*;
- 20           f. Whether Defendant's labeling and advertising of the Products are  
21 misleading in violation of Business and Professions Code section  
22 17500, *et seq.*;
- 23           g. Whether Defendant knew or by the exercise of reasonable care should  
24 have known its labeling and advertising was and is misleading in  
25 violation of Business and Professions Code section 17500, *et seq.*;
- 26           h. Whether Defendant's conduct is an unfair business practice within the  
27 meaning of Business and Professions Code section 17200, *et seq.*;
- 28           i. Whether Defendant's conduct is a fraudulent business practice within  
the meaning of Business and Professions Code section 17200, *et seq.*;
- 29           j. Whether Defendant's conduct is an unlawful business practice within  
the meaning of Business and Professions Code section 17200, *et seq.*;
- 30           k. Whether Plaintiffs and the Class paid more money for the Products  
than they actually received;
- 31           l. How much more money Plaintiffs and the Class paid for the Products  
than they actually received;
- 32           m. Whether Defendant's conduct constitutes breach of warranty;
- 33           n. Whether Plaintiffs and the Class are entitled to injunctive relief; and
- 34           o. Whether Defendant was unjustly enriched by its unlawful conduct.

1           **66. Predominance.** The common questions of law and fact predominate over  
2 questions that affect only individual Class Members.

3           **67. Typicality.** Plaintiffs' claims are typical of the claims of the Class  
4 Members they seek to represent because Plaintiffs, like the Class Members purchased  
5 Defendant's misleading and deceptive Products. Defendant's unlawful, unfair and/or  
6 fraudulent actions concern the same business practices described herein irrespective  
7 of where they occurred or were experienced. Plaintiffs and the Class sustained similar  
8 injuries arising out of Defendant's conduct. Plaintiffs' and Class Members' claims  
9 arise from the same practices and course of conduct and are based on the same legal  
10 theories.

11          **68. Adequacy.** Plaintiffs are adequate representatives of the Class they seek  
12 to represent because their interests do not conflict with the interests of the Class  
13 Members. Plaintiffs will fairly and adequately protect Class Members' interests and  
14 have retained counsel experienced and competent in the prosecution of complex class  
15 actions, including complex questions that arise in consumer protection litigation.

16          **69. Ascertainability.** Class Members can easily be identified by an  
17 examination and analysis of the business records regularly maintained by Defendant,  
18 among other records within Defendant's possession, custody, or control.  
19 Additionally, further Class Member data can be obtained through additional third-  
20 party retailers who retain customer records and order histories.

21          **70. Superiority and Substantial Benefit.** A class action is superior to other  
22 methods for the fair and efficient adjudication of this controversy, since individual  
23 joinder of all members of the Class is impracticable and no other group method of  
24 adjudication of all claims asserted herein is more efficient and manageable for at least  
25 the following reasons:

- 26           a. The claims presented in this case predominate over any questions of  
27 law or fact, if any exist at all, affecting any individual member of the  
Class;

- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
  - c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
  - d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
  - e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and Class Members can seek redress for the harm caused to them by Defendant.

**71. Inconsistent Rulings.** Because Plaintiffs seek relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

**72. Injunctive/Declaratory Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or declaratory relief with respect to the Class as a whole.

**73. Manageability.** Plaintiffs and their counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

## **VII. CAUSES OF ACTION**

COUNT ONE

# **Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

**(On Behalf of the California Subclass)**

**74. Incorporation by Reference.** Plaintiffs re-allege and incorporate by

1 reference all allegations contained in this complaint, as though fully set forth herein.

2       **75. California Subclass.** This cause of action is brought pursuant to Business  
3 and Professions Code Section 17200, *et seq.*, on behalf of Plaintiffs and a California  
4 Subclass who purchased the Products within the applicable statute of limitations.

5       **76. The UCL.** California Business & Professions Code, sections 17200, *et*  
6 *seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that  
7 “unfair competition shall mean and include unlawful, unfair or fraudulent business  
8 practices and unfair, deceptive, untrue or misleading advertising.”

9       **77. False Advertising Claims.** Defendant, in its advertising and packaging  
10 of the Products, made misleading statements and fraudulent omissions regarding the  
11 quality and characteristics of the Products—specifically, the Affirmative  
12 Misrepresentations and Material Omission—despite the fact that the Products are not  
13 safe because they leach microplastics when used as intended. Such claims and  
14 omission appear on the label and packaging of the Products, which are sold at retail  
15 stores and point-of-purchase displays, as well as Defendant’s official website, and  
16 other retailers’ advertisements that have adopted Defendant’s advertisements.

17       **78. Defendant’s Deliberately Fraudulent Marketing Scheme.** Defendant  
18 does not have any reasonable basis for the claims about the Products made in  
19 Defendant’s advertising and on Defendant’s packaging or labeling because the  
20 Products are not “Microwave Safe,” “Microwave Reheatable,” or “Freezer Safe”.  
21 Defendant knew and knows that the Products are not free from plastic exposure  
22 because they leach microplastics into the content in the food container in ordinary  
23 use, though Defendant intentionally advertised and marketed the Products to deceive  
24 reasonable consumers into believing that the Products are safe.

25       **79. Exclusive Knowledge.** Defendant has exclusive knowledge of the  
26 Products’ danger of leaching microplastics. As the manufacturer of the Products,  
27 Defendant is in a superior position to consumers, including Plaintiff, to know about  
28 the risks associated with microplastic contamination. Defendant’s control over the

1 manufacturing, design, distribution, and safety testing of the Products gives it unique  
2 and exclusive knowledge of the presence of the Material Danger. This superior  
3 knowledge places Defendant in a position of responsibility to disclose the risk of  
4 microplastic exposure, yet Defendant deliberately withheld this critical information  
5 from consumers while marketing the Products with the Affirmative Representations.

6 **80. Misleading Advertising Claims Cause Purchase of Products.**  
7 Defendant's labeling and advertising of the Products led to, and continues to lead to,  
8 reasonable consumers, including Plaintiffs, believing that the Products are a safe  
9 feeding solution for their children.

10 **81. Injury in Fact.** Plaintiffs and the California Subclass have suffered injury  
11 in fact and have lost money or property as a result of and in reliance upon the Material  
12 Omission—namely, Plaintiffs and the California Subclass lost the purchase price for  
13 the Products they bought from Defendant.

14 **82. Conduct Violates the UCL.** Defendant's conduct, as alleged herein,  
15 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.  
16 The UCL prohibits unfair competition and provides, in pertinent part, that “unfair  
17 competition shall mean and include unlawful, unfair or fraudulent business practices  
18 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code §  
19 17200. In addition, Defendant's use of various forms of advertising media to  
20 advertise, call attention to, or give publicity to the sale of goods or merchandise that  
21 are not as represented in any manner constitutes unfair competition, unfair, deceptive,  
22 untrue or misleading advertising, and an unlawful business practice within the  
23 meaning of Business and Professions Code Sections 17200 and 17531, which  
24 advertisements have deceived and are likely to deceive the consuming public, in  
25 violation of Business and Professions Code Section 17200.

26 **83. No Reasonably Available Alternatives/Legitimate Business Interests.**  
27 Defendant failed to avail itself of reasonably available, lawful alternatives to further  
28 its legitimate business interests.

1       **84. Business Practice.** All of the conduct alleged herein occurred and  
2 continues to occur in Defendant's business. Defendant's wrongful conduct is part of  
3 a pattern, practice and/or generalized course of conduct, which will continue on a  
4 daily basis until Defendant voluntarily alters its conduct or Defendant is otherwise  
5 ordered to do so.

6       **85. Injunction.** Pursuant to Business and Professions Code Sections 17203  
7 and 17535, Plaintiffs and the members of the California Subclass seek an order of this  
8 Court enjoining Defendant from continuing to engage, use, or employ its practice of  
9 labeling and advertising the sale and use of the Products. Likewise, Plaintiffs and the  
10 members of the California Subclass seek an order requiring Defendant to disclose  
11 such misrepresentations, and to preclude Defendant's failure to disclose the existence  
12 and significance of said misrepresentations.

13        86. **Causation/Damages.** As a direct and proximate result of Defendant's  
14 misconduct in violation of the UCL, Plaintiffs and members of the California Subclass  
15 were harmed in the amount of the purchase price they paid for the Products. Further,  
16 Plaintiffs and members of the California Subclass have suffered and continue to suffer  
17 economic losses and other damages including, but not limited to, the amounts paid  
18 for the Products, and any interest that would have accrued on those monies, in an  
19 amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for  
20 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains  
21 to compensate Plaintiffs and the California Subclass for said monies, as well as  
22 injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm  
23 that will result.

## “Unfair” Prong

25       **87. Unfair Standard.** Under the UCL, a challenged activity is “unfair” when  
26       “any injury it causes outweighs any benefits provided to consumers and the injury is  
27       one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto*  
28       *Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

1       **88. Injury.** Defendant's action of mislabeling the Products with the  
2 Affirmative Misrepresentations and Material Omission does not confer any benefit to  
3 consumers; rather, doing so causes injuries to consumers, who do not receive products  
4 commensurate with their reasonable expectations, overpay for the Products, receive  
5 Products of lesser standards than what they reasonably expected to receive, and are  
6 exposed to increased health risks. Consumers cannot avoid any of the injuries caused  
7 by Defendant's deceptive labeling and advertising of the Products. Accordingly, the  
8 injuries caused by Defendant's deceptive labeling and advertising outweigh any  
9 benefits.

10      **89. Balancing Test.** Some courts conduct a balancing test to decide if a  
11 challenged activity amounts to unfair conduct under California Business and  
12 Professions Code Section 17200. They "weigh the utility of the defendant's conduct  
13 against the gravity of the harm to the alleged victim." *Davis v. HSBC Bank Nevada,*  
14 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

15      **90. No Utility.** Here, Defendant's conduct of labeling the Products with the  
16 Affirmative Misrepresentations while omitting the Material Danger has no legitimate  
17 utility and financially harms consumers. Any potential utility from Defendant's  
18 conduct is vastly outweighed by the gravity of the harm caused to consumers, who  
19 are unknowingly exposed to microplastic contamination and unjustly pay a premium  
20 for Products that fail to meet their reasonable expectations of safety.

21      **91. Legislative Declared Policy.** Some courts require that "unfairness must  
22 be tethered to some legislative declared policy or proof of some actual or threatened  
23 impact on competition." *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735  
24 (9th Cir. 2007).

25      **92. Unfair Conduct.** Defendant's labeling and advertising of the Products,  
26 as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair  
27 conduct. Defendant knew or should have known of its unfair conduct. Defendant's  
28 Affirmative Misrepresentations and Material Omission constitutes an unfair business

1 practice within the meaning of California Business and Professions Code Section  
2 17200.

3       **93. Reasonably Available Alternatives.** Reasonably available alternatives  
4 existed that would have allowed Defendant to further its legitimate business interests  
5 without engaging in the deceptive conduct described herein. Defendant could have  
6 refrained from labeling the Products with the Affirmative Misrepresentations without  
7 disclosing the risk of microplastic contamination. Alternatively, Defendant could  
8 have provided clear warnings on the Products' labels to inform consumers of the  
9 potential dangers associated with heating and freezing the Products as intended. These  
10 reasonable alternatives would have allowed Defendant to market its Products  
11 truthfully while protecting consumers from the undisclosed risks of microplastic  
12 exposure.

13       **94. Defendant's Wrongful Conduct.** All of the conduct alleged herein  
14 occurs and continues to occur in Defendant's business. Defendant's wrongful conduct  
15 is part of a pattern or generalized course of conduct repeated on thousands of  
16 occasions daily.

17       **95. Injunction.** Pursuant to Business and Professions Code Section 17203,  
18 Plaintiffs and the California Subclass seek an order from this Court enjoining  
19 Defendant from continuing its practice of labeling the Products with the Affirmative  
20 Misrepresentations without disclosing the risk of microplastic contamination.  
21 Plaintiffs and the California Subclass request that the Court prohibit Defendant from  
22 engaging in these deceptive practices to prevent further harm to consumers.

23       **96. Causation/Damages.** Plaintiffs and the California Subclass have suffered  
24 injury in fact, have lost money, and were exposed to increased health risks as a result  
25 of Defendant's unfair conduct. Plaintiffs and the California Subclass paid an  
26 unwarranted premium for the Products, believing they were safe and free from  
27 harmful plastic exposure. Specifically, Plaintiffs and the California Subclass paid for  
28 Products they reasonably believed did not pose the risk of microplastic contamination.

1 Had they known the truth, Plaintiffs and the California Subclass would not have  
2 purchased the Products or would have paid substantially less for them. Accordingly,  
3 Plaintiffs and the California Subclass seek damages, restitution, and/or disgorgement  
4 of ill-gotten gains pursuant to the UCL.

5 **“Fraudulent” Prong**

6       **97. Fraud Standard.** The UCL considers conduct fraudulent (and prohibits  
7 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*  
8 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

9       **98. Fraudulent & Material Misrepresentations and Material Omission.**  
10 Defendant employed the Affirmative Misrepresentations and Material Omission with  
11 the intent to sell the Products to consumers, including Plaintiffs and the California  
12 Subclass. The Affirmative Misrepresentations and Material Omission are deceptive,  
13 and Defendant knew or should have known of their deceptive nature. By affirmatively  
14 representing the Products with the Affirmative Misrepresentations while omitting the  
15 risk that the Products release harmful microplastics when heated and frozen,  
16 Defendant misleads consumers into believing the Products are safe for their intended  
17 use. Both the Affirmative Misrepresentations and Material Omission are likely to  
18 mislead reasonable consumers, as they pertain to a critical safety concern that is  
19 material to the purchasing decisions of the average, ordinary, and reasonable  
20 consumer.

21       **99. Fraudulent Business Practice.** As alleged herein, the misrepresentations  
22 by Defendant constitute a fraudulent business practice in violation of California  
23 Business & Professions Code Section 17200.

24       **100. Reasonable and Detrimental Reliance.** Plaintiffs and the California  
25 Subclass reasonably and detrimentally relied on the Affirmative Misrepresentations  
26 and the Material Omission to their detriment in that they purchased the Products.

27       **101. Reasonably Available Alternatives.** Defendant had reasonably  
28 available alternatives to further its legitimate business interests, other than the conduct

described herein. Defendant could have refrained from labeling the Products with the Affirmative Misrepresentations and Material Omission. Alternatively, Defendant could have provided clear warnings on the Products' labels to inform consumers of the potential dangers associated with heating and freezing the Products as intended.

5       **102. Business Practice.** All of the conduct alleged herein occurs and continues  
6 to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern  
7 or generalized course of conduct.

8           **103. Injunction.** Pursuant to Business and Professions Code Section 17203,  
9 Plaintiffs and the California Subclass seek an order from this Court enjoining  
10 Defendant from continuing its practice of labeling the Products with the Affirmative  
11 Misrepresentations without disclosing the risk of microplastic contamination.  
12 Plaintiffs and the California Subclass further seek an order requiring Defendant to  
13 cease its deceptive conduct and to provide clear and conspicuous warnings about the  
14 risk of microplastic exposure when the Products are heated and frozen as intended.

104. **Causation/Damages.** Plaintiffs and the California Subclass have suffered  
injury in fact and have lost money as a result of Defendant's fraudulent conduct.  
Plaintiffs paid an unwarranted premium for the Products. Specifically, Plaintiffs and  
the California Subclass paid for Products they reasonably believed did not pose the  
risk of microplastic contamination. Had they known the truth, Plaintiffs and the  
California Subclass would not have purchased the Products or would have paid  
substantially less for them. Accordingly, Plaintiffs and the California Subclass seek  
damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

### “Unlawful” Prong

24       **105. Unlawful Standard.** The UCL identifies violations of other laws as  
25       “unlawful practices that the unfair competition law makes independently actionable.”  
26       *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

**106. Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged herein, violates California Civil Code sections 1750, *et seq* (the "CLRA") and

1 California Business and Professions Code sections 17500, *et seq.* (the “FAL”) as set  
2 forth below in the sections regarding those causes of action.

3       **107. Fraud.** Additionally, Defendant’s use of the Material Omission to sell the  
4 Products violates California Civil Code sections 1572 (actual fraud), 1573  
5 (constructive fraud), 1709-1710 (fraudulent deceit), and 1711 (deceit upon the  
6 public), as set forth above.

7       **108. Additional Violations.** Defendant’s conduct in making the false  
8 representations and deceptive omission described herein constitutes a knowing failure  
9 to adopt policies in accordance with and/or adherence to applicable laws, as set forth  
10 herein, all of which are binding upon and burdensome to its competitors. This conduct  
11 engenders an unfair competitive advantage for Defendant, thereby constituting an  
12 unfair, fraudulent and/or unlawful business practice under California Business &  
13 Professions Code sections 17200-17208. Additionally, Defendant’s omission of  
14 material facts, as set forth herein, violates California Civil Code sections 1572, 1573,  
15 1709, 1710, 1711, and 1770, as well as the common law.

16       **109. Unlawful Conduct.** Defendant’s packaging, labeling, and advertising of  
17 the Products, as alleged herein, are deceptive, misleading, and unreasonable, and  
18 constitute unlawful conduct. Defendant knew or should have known of its unlawful  
19 conduct.

20       **110. Reasonably Available Alternatives.** Defendant had reasonably  
21 available alternatives to further its legitimate business interests, other than the conduct  
22 described herein. Defendant could have refrained from labeling the Products with  
23 Affirmative Misrepresentations without disclosing the risk of microplastic  
24 contamination. Alternatively, Defendant could have provided clear warnings on the  
25 Products’ labels to inform consumers of the potential dangers associated with heating  
26 and freezing the Products as intended.

27       **111. Business Practice.** All of the conduct alleged herein occurs and continues  
28 to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern

or generalized course of conduct.

**112. Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiffs and the California Subclass seek an order from this Court enjoining Defendant from continuing its practice of labeling the Products with the Affirmative Misrepresentations without disclosing the risk of microplastic contamination. Plaintiffs and the California Subclass further seek an order requiring Defendant to cease its deceptive conduct and to provide clear and conspicuous warnings about the risk of microplastic exposure when the Products are heated and frozen as intended.

**113. Causation/Damages.** Plaintiffs and the California Subclass have suffered injury in fact and have lost money as a result of Defendant's unlawful conduct. Plaintiffs and the California Subclass paid an unwarranted premium for the Products. Plaintiffs and the California Subclass would not have purchased the Products if they had known that Defendant's purposely deceived consumers into believing that the Products are free from harmful plastic exposure. Accordingly, Plaintiffs seek damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

## COUNT TWO

## **Violation of California False Advertising Law**

**(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

**(On Behalf of the California Subclass)**

**114. Incorporation by reference.** Plaintiffs re-allege and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

**115. California Subclass.** Plaintiffs bring this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

**116. FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading advertising[.]”

## 117. The Affirmative Misrepresentations and Material Omission

1       **Disseminated to the Public.** Defendant violated Section 17500 when it advertised  
2 and marketed the Products through the unfair, deceptive, and misleading Affirmative  
3 Misrepresentations and Material Omission disseminated to the public via the  
4 Products' labeling, packaging, and advertising. The Affirmative Misrepresentations  
5 and Material Omission were deceptive because the Products do not conform to the  
6 representations made about their safety, including the affirmative "Microwave Safe"  
7 claim, the Microwave Reheatable" claim, and the "Freezer Safer" claim. The  
8 Affirmative Misrepresentations and Material Omission were material because they  
9 are likely to, and did, mislead reasonable consumers into purchasing the Products  
10 under the false belief that they were safe for their intended use and free from the risk  
11 of microplastic contamination.

12       **118. Knowledge.** In making and disseminating the Affirmative  
13 Misrepresentations and the Material Omission, Defendant knew or should have  
14 known that the Affirmative Misrepresentations and the Material Omission were  
15 untrue or misleading and thereby acted in violation of California Business and  
16 Professions Code § 17500. Defendant's affirmative representation that the Products  
17 are "Microwave Safe," "Microwave Reheatable," and "Freezer Friendly" use  
18 combined with its failure to disclose the risk of microplastic contamination,  
19 constituted a deceptive practice that Defendant knew, or should have known, was  
20 false and likely to mislead reasonable consumers.

21       **119. Exclusive Knowledge.** Defendant has exclusive knowledge of the  
22 Products' danger of leaching microplastics. As the manufacturer of the Products,  
23 Defendant is in a superior position to consumers, including Plaintiffs, to know about  
24 the risks associated with microplastic contamination. Defendant's control over the  
25 manufacturing, design, distribution, and safety testing of the Products provides it with  
26 exclusive knowledge of the presence of the Material Danger. This superior knowledge  
27 placed Defendant in a position of responsibility to disclose the risk of microplastic  
28 exposure, yet Defendant deliberately withheld this critical information while

affirmatively marketing the Products with the Affirmative Representations.

**120. Intent to sell.** Defendant's Affirmative Misrepresentations and Material Omission were specifically designed to induce reasonable consumers, like Plaintiffs and the California Subclass, to purchase the Products.

**121. Causation/Damages.** As a direct and proximate result of Defendant's misconduct in violation of the FAL, Plaintiffs and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

## **COUNT THREE**

## **Violation of California Consumers Legal Remedies Act**

**(Cal. Civ. Code §§ 1750, *et seq.*)**

**(On Behalf of the California Subclass)**

**122. Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

**123. California Subclass.** Plaintiffs bring this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

**124. CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

**125. Goods/Services.** The Products are “goods,” as defined by the CLRA in

1 California Civil Code § 1761(a).

2       **126. Defendant.** Defendant is a “person,” as defined by the CLRA in  
3 California Civil Code § 1761(c).

4       **127. Consumers.** Plaintiffs and members of the California Subclass are  
5 “consumers,” as defined by the CLRA in California Civil Code § 1761(d).

6       **128. Transactions.** The purchase of the Products by Plaintiffs and members  
7 of the California Subclass are “transactions” as defined by the CLRA under California  
8 Civil Code § 1761(e).

9       **129. Violations of the CLRA.** Defendant violated the following sections of  
10 the CLRA by selling the Products to Plaintiffs and the California Subclass through  
11 the misleading, deceptive, and the fraudulent Affirmative Misrepresentations and  
12 Material Omission.

- 13       a. Section 1770(a)(5) by representing that the Products have  
14           “characteristics, . . . uses [or] benefits . . . which [they] do not have.”
- 15       b. Section 1770(a)(7) by representing that the Products “are of a  
16           particular standard, quality, or grade . . . [when] they are of another.”
- 17       c. Section 1770(a)(9) by advertising the Products “with [the] intent not  
18           to sell them as advertised.”

19       **130. Knowledge.** Defendant’s uniform Affirmative Misrepresentations and  
20 Material Omission of the Material Danger regarding the Products was likely to  
21 deceive, and Defendant knew or should have known that its omission and  
misrepresentations were misleading.

22       **131. Exclusive Knowledge.** Defendant’s uniform Affirmative  
23 Misrepresentations and Material Omission of the Material Danger regarding the  
24 Products was likely to deceive reasonable consumers. Defendant knew or should have  
25 known that its Affirmative Misrepresentations and Material Omission of the Material  
26 Danger was misleading and deceptive. By failing to disclose this critical safety risk,  
27 Defendant misled consumers into believing the Products were safe for their intended  
use.

1           **132. Malicious.** Defendant's conduct is malicious, fraudulent, and wanton in  
2 that Defendant intentionally misled and withheld material information from  
3 consumers, including Plaintiffs, to increase the sale of the Products.

4           **133. Plaintiffs Could Not Have Avoided Injury.** Plaintiffs and members of  
5 the California Subclass could not have reasonably avoided such injury. Plaintiffs and  
6 members of the California Subclass were misled and unaware of the existence of facts  
7 that Defendant suppressed and failed to disclose, and Plaintiffs and members of the  
8 California Subclass would not have purchased the Products and/or would have  
9 purchased them on different terms had they known the truth.

10          **134. Causation/Reliance/Materiality.** Plaintiffs and the California Subclass  
11 suffered harm as a result of Defendant's violations of the CLRA because they relied  
12 on the Affirmative Misrepresentations and Material Omission in deciding to purchase  
13 the Products. The Affirmative Misrepresentations and Material Omission were  
14 together a substantial factor. The Affirmative Misrepresentations and Material  
15 Omission were material because a reasonable consumer would consider it important  
16 in deciding whether to purchase the Products.

17          **135. Section 1782(d).** Pursuant to California Civil Code, Section 1782,  
18 Plaintiffs' counsel, acting on behalf of all members of the Class, concurrent with the  
19 filing of this Complaint mailed a statutory notice letter, via U.S. Certified Mail, return  
20 receipt requested, addressed to Defendant at their principal place of business  
21 registered with the Georgia Department of State (6655 Peachtree Dunwoody Road,  
22 Atlanta, GA, 30328) as well as to Defendant's registered agent for service of process  
23 (Corporation Service Company, 2 Sun Court, Suite 400, Peachtree Corners, GA,  
24 30092). The letter formally notified Defendant of the violations of Section 1770 set  
25 forth herein and demanded that Defendant take corrective action to remedy the issues  
26 resulting from the conduct described herein, as well as provide notice of its intent to  
27 do so to all affected consumers. Should Defendant fail to undertake such corrective  
28 measures and issue the required notice within thirty (30) days of the date of written

1 notice, Plaintiffs will amend this Complaint to seek actual, punitive, and statutory  
2 damages, as permitted by law.

3           **136. Injunction.** Given that Defendant's conduct violated California Civil  
4 Code section 1780, Plaintiffs and members of the California Subclass are entitled to  
5 seek, and do hereby seek, injunctive relief to put an end to Defendant's violations of  
6 the CLRA and to dispel the public misperception created, facilitated, and fostered by  
7 Defendant's false and misleading advertising campaign. Plaintiffs have no adequate  
8 remedy at law. Without equitable relief, Defendant's unfair and deceptive practices  
9 will continue to harm Plaintiffs and the California Subclass. Accordingly, Plaintiffs  
10 seek an injunction pursuant to section 1780(a)(2) to enjoin Defendant from continuing  
11 its unlawful methods, acts, and practices, including its deceptive labeling of the  
12 Products with the Affirmative Misrepresentations while omitting the risk of  
13 microplastic contamination. Plaintiffs also seeks an order requiring Defendant to take  
14 corrective action necessary to dispel the public misperception created by Defendant's  
15 deceptive conduct and to provide clear and conspicuous disclosures about the risks  
16 posed by the Products.

## **COUNT FOUR**

## Breach of Warranty

**(On Behalf of the Nationwide Class and California Subclass)**

20       **137. Incorporation by Reference.** Plaintiffs re-allege and incorporate by  
21 reference all allegations contained in this complaint, as though fully set forth herein.

22       **138. Nationwide Class & California Subclass.** Plaintiffs bring this claim  
23 individually and on behalf of the Nationwide Class and California Subclass who  
24 purchased the Products within the applicable statute of limitations.

25       **139. Express Warranty.** By advertising and selling the Products at issue,  
26 Defendant made promises and affirmations of fact on the Products' packaging,  
27 labeling, and through its marketing and advertising, as described herein. This labeling  
28 and advertising constitute express warranties that became part of the basis of the

1 bargain between Plaintiffs, members of the Class, and Defendant. Through the  
2 Products' labeling and advertising, including the Affirmative Representations—  
3 “Microwave Safe” claim, the “Microwave Reheatable” claim, the “Freezer Safe”  
4 claim, Defendant expressly warranted that the Products were safe for heating and  
5 freezing. Defendant's Material Omission of the risk that the Products release harmful  
6 microplastics when heated and frozen is inconsistent with this express warranty. As a  
7 result, Defendant's representations misled consumers into believing the Products  
8 were safe for their intended use, when in fact they posed a risk of microplastic  
9 contamination.

10       **140. Implied Warranty of Merchantability.** By advertising and selling the  
11 Products at issue, Defendant, as a merchant of goods, made promises and affirmations  
12 of fact that the Products are merchantable and conform to the promises and  
13 affirmations of fact made on the Products' packaging, labeling, and through its  
14 marketing and advertising, as described herein. This labeling and advertising,  
15 combined with the implied warranty of merchantability, constitute warranties that  
16 became part of the basis of the bargain between Plaintiffs, members of the Class, and  
17 Defendant. Specifically, Defendant's Affirmative Misrepresentations coupled with its  
18 Material Omission falsely conveyed that the Products were safe for their intended use.  
19 Defendant's failure to disclose this material risk violated the implied warranty of  
20 merchantability and misled consumers into believing the Products conformed to their  
21 reasonable expectations of safety and quality.

22       **141. Breach of Warranty.** Contrary to Defendant's warranties, the Products  
23 do not conform to the Affirmative Representations. Therefore, Defendant breached  
24 its warranties about the Products and their qualities.

25       **142. Exclusive Knowledge.** Defendant has exclusive knowledge of the  
26 Products' danger of leaching microplastics. As the manufacturer of the Products,  
27 Defendant is in a superior position to consumers, including Plaintiffs, to know about  
28 the risks associated with microplastic contamination. Defendant's control over the

1 manufacturing, design, distribution, and safety testing of the Products provides it with  
2 exclusive knowledge of the presence of the Material Danger. This superior knowledge  
3 imposed a responsibility on Defendant to disclose the risk of microplastic exposure.  
4 Instead, Defendant concealed this critical information while affirmatively marketing  
5 the Products with the Affirmative Representations.

6 **143. Causation/Remedies.** As a direct and proximate result of Defendant's  
7 breach of warranty, Plaintiffs and members of the Class were harmed in the amount  
8 of the purchase price they paid for the Products. Additionally, Plaintiffs and members  
9 of the Class have suffered and continue to suffer economic losses and other damages,  
10 including but not limited to the amounts paid for the Products and any interest that  
11 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
12 Plaintiffs seek a monetary award for breach of warranty in the form of damages,  
13 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the  
14 Class for these losses. Plaintiffs also seek injunctive relief to enjoin Defendant's  
15 misconduct and prevent ongoing and future harm to consumers.

16 **144. Punitive Damages.** Plaintiffs seek punitive damages pursuant to this  
17 cause of action for breach of warranty on behalf of Plaintiffs and the Class.  
18 Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes  
19 malicious, oppressive, and/or fraudulent behavior warranting an award of punitive  
20 damages as permitted by law. Defendant's misconduct was malicious in that  
21 Defendant acted with the intent to cause Plaintiffs and consumers to pay for Products  
22 that were not, in fact, what they believed they were purchasing. Defendant willfully  
23 and knowingly disregarded the rights of Plaintiffs and consumers, despite being fully  
24 aware of the probable dangerous consequences of its conduct. Rather than disclosing  
25 the risk that its Products leach harmful microplastics when heated and frozen,  
26 Defendant deliberately concealed this information and continued marketing the  
27 Products with the Affirmative Misrepresentations to intentionally mislead consumers.  
28 Defendant's misconduct was oppressive because its conduct was vile, base, and

1 contemptible, the kind of behavior that reasonable people would look down upon and  
2 despise. By knowingly placing consumers at risk of microplastic exposure while  
3 falsely representing the Products as safe, Defendant subjected Plaintiffs and  
4 consumers to cruel and unjust hardship in knowing disregard of their rights.  
5 Defendant’s misconduct was fraudulent because Defendant intentionally  
6 misrepresented and/or concealed material facts with the intent to deceive Plaintiffs  
7 and consumers. Defendant’s wrongful conduct, demonstrating malice, oppression,  
8 and/or fraud, was committed, authorized, adopted, approved, and/or ratified by  
9 Defendant’s officers, directors, and/or managing agents. Accordingly, Plaintiffs seek  
10 an award of punitive damages against Defendant to deter such egregious misconduct  
11 and to hold Defendant accountable for its intentional and reckless actions.

## **COUNT FIVE**

## **Unjust Enrichment/Restitution**

**(On Behalf of the Nationwide Class and California Subclass)**

15       **145. Incorporation by Reference.** Plaintiffs re-allege and incorporate by  
16 reference all allegations contained in this complaint, as though fully set forth herein.

17       **146. Nationwide Class & California Subclass.** Plaintiffs bring this claim  
18 individually and on behalf of the Nationwide Class and California Subclass who  
19 purchased the Products within the applicable statute of limitations.

20       **147. Plaintiffs/Class Conferred a Benefit.** By purchasing the Products,  
21 Plaintiffs and members of the Class conferred a benefit on Defendant in the form of  
22 the purchase price of the Products.

23       **148. Defendant's Knowledge of Conferred Benefit.** Defendant had  
24 knowledge of such benefit and Defendant appreciated the benefit because, were  
25 consumers not to purchase the Products, Defendant would not generate revenue from  
26 the sales of the Products.

27       **149. Exclusive Knowledge.** Defendant has exclusive knowledge of the  
28 Products' danger to leach microplastics. Defendant, as the manufacturer of the

1 Products, is in a superior knowledge position to consumers, including Plaintiffs, to  
 2 know about the microplastics danger. Defendant's control of the manufacturing,  
 3 design, distribution, and safety testing of the Products gives Defendant exclusive  
 4 knowledge of the presence of the Material Danger.

5 **150. Defendant's Unjust Receipt Through Deception.** Defendant's knowing  
 6 acceptance and retention of the benefit is inequitable and unjust because the benefit  
 7 was obtained by Defendant's fraudulent, misleading, and deceptive omission.

8 **151. Causation/Damages.** As a direct and proximate result of Defendant's  
 9 unjust enrichment, Plaintiffs and members of the Class were harmed in the amount of  
 10 the purchase price they paid for the Products. Additionally, Plaintiffs and members of  
 11 the Class have suffered and continue to suffer economic losses and other damages,  
 12 including but not limited to the amounts paid for the Products and any interest that  
 13 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
 14 Plaintiffs seeks a monetary award for breach of warranty in the form of damages,  
 15 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the  
 16 Class for these losses. Plaintiffs also seek injunctive relief to enjoin Defendant's  
 17 misconduct and prevent ongoing and future harm to consumers.

### 18 **VIII. PRAYER FOR RELIEF**

19 152. WHEREFORE, Plaintiffs, individually and on behalf of all others  
 20 similarly situated, pray for judgment against Defendant as follows:

- 21 a. **Certification:** For an order certifying this action as a class action,  
 appointing Plaintiffs as the Class Representatives, and appointing  
 Plaintiffs' Counsel as Class Counsel;
- 22 b. **Declaratory Relief:** For an order declaring that Defendant's conduct  
 violates the statutes and laws referenced herein consistent with  
 applicable law and pursuant to only those causes of action so  
 permitted;
- 23 c. **Injunction:** For an order requiring Defendant to change its business  
 practices to prevent or mitigate the risk of the consumer deception and  
 violations of law outlined herein. This includes, for example, orders  
 that Defendant immediately cease and desist from selling the unlawful  
 Products with the Affirmative Misrepresentations and the Material  
 Omission in violation of law; that enjoin Defendant from continuing

1 to market, advertise, distribute, and sell the Products in the unlawful  
2 manner described herein; that require Defendant to add appropriate  
3 warning labels to dispel the public misperception of the Products  
4 resulting from Defendant's unlawful conduct; and/or that require  
5 Defendant to take all further and just corrective action, consistent with  
6 applicable law and pursuant to only those causes of action so  
7 permitted;

- 8
- 9 d. **Damages/Restitution/Disgorgement:** For an order awarding  
10 monetary compensation in the form of damages, restitution, and/or  
11 disgorgement to Plaintiffs and the Class, consistent with applicable  
12 law and pursuant to only those causes of action so permitted;
  - 13 e. **Punitive Damages/Penalties:** For an order awarding punitive  
14 damages, statutory penalties, and/or monetary fines, consistent with  
15 applicable law and pursuant to only those causes of action so  
16 permitted;
  - 17 f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and  
18 costs, consistent with applicable law and pursuant to only those causes  
19 of action so permitted;
  - 20 g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment  
21 and post-judgment interest, consistent with applicable law and  
22 pursuant to only those causes of action so permitted; and
  - 23 h. **All Just & Proper Relief:** For such other and further relief as the  
24 Court deems just and proper.

## 15 16 IX. **DEMAND FOR JURY TRIAL**

17 Plaintiffs hereby demand a trial by jury on all issues and causes of action so  
18 triable.

19 Dated: April 28, 2025

20 **CLARKSON LAW FIRM, P.C.**

21 /s/ Bahar Sodaify

22 Ryan J. Clarkson  
23 Bahar Sodaify  
24 Alan Gudino

25  
26  
27  
28 *Attorneys for Plaintiffs*